

# **Global Corporate Tax Handbook 2010**



Global Tax Series

# Malta

This chapter is based on information available up to 10 March 2010.

## Introduction

There is no separate system of corporation tax in Malta, and a company is subject to income tax in much the same way as an individual. The Maltese tax system has its origins in the former British system and, as was the case in the United Kingdom up to 1965, company profits are subject to income tax, but there is no separate or additional corporation tax. The principal legislation on income tax is contained in the Income Tax Act of 1948 and the Income Tax Management Act of 1994, as subsequently amended.

Social security contributions are payable by employers and employees. A VAT system is applied.

From 1 May 2004, Malta is a Member State of the European Union. Important features of the Maltese tax system have been harmonized with EU tax law, including direct taxes, VAT, excise duties, mutual assistance and administration procedures.

With effect from 1 January 2008, the currency is the euro (EUR).

## 1. Corporate Income Tax

### 1.1. Type of tax system

There is no separate system of corporation tax, and a company is subject to income tax in much the same way as an individual. In general, a full imputation system is used. Under this system, dividends paid by a company resident in Malta carry a tax credit equivalent to the tax paid by the company on its profits out of which the dividends are distributed. This system applies to both resident and non-resident shareholders. Shareholders are taxed on the gross dividend at the applicable tax rates, but are entitled to deduct the tax credit attaching to the dividend against their total income tax liability.

#### Example

Dividends received by a corporate shareholder

profits of distributing company	100
tax thereon at 35%	(35)
dividend paid	65
dividend received	65
grossed-up dividend (65 + 35)	100
tax thereon at 35%	35
imputation tax credit	(35)
income tax payable	0

The tax system distinguishes between taxed income and untaxed income. Taxed income is further divided into the Final Tax Account, the Immovable Property Account, the Maltese Taxed Account and the Foreign Income Account, depending on the nature of the income. The imputation system described above does not apply to distributions made out of the Final Tax Account.

Upon a distribution of profits from the Maltese Taxed Account or the Foreign Income Account, the shareholders of the Maltese company, whether resident in Malta or not, are entitled to claim a full or partial refund of tax paid by the Maltese company, depending on the nature of the income (see 6.1.1.).

The difference between a company's distributable profits, as shown in its financial statements, and the total amounts of the taxed accounts is referred to as untaxed income. A final withholding tax of 15% is imposed on dividends paid out of untaxed income to Maltese-resident individuals and bodies of persons other than companies.

### 1.2. Taxable persons

Income tax is levied on any person that includes the following bodies corporate:

- (1) a company, which is defined as:
  - (a) partnership *en commandite*, the capital of which is divided into shares;
  - (b) partnership *anonyme* (limited liability company);
  - (c) any body of persons constituted, incorporated or registered outside Malta and of a nature similar to the aforesaid partnerships;
  - (d) any cooperative society duly registered as such in Malta; and
- (2) any fellowship, society or other association of persons, whether incorporated or unincorporated, and whether vested with legal personality or not.

Partnerships, other than partnerships referred to in (1) are transparent for tax purposes and the tax is therefore levied on the partners of the partnership and not on the partnership itself.

This survey is restricted to the taxation of companies as defined in (1).

#### 1.2.1. Residence

Companies that are incorporated in Malta are considered to be both domiciled and resident in Malta. Companies that are not incorporated in Malta are considered to be resident in Malta when the control and management of their business are exercised in Malta.

### 1.3. Taxable income

#### 1.3.1. General

Companies that are both resident and domiciled in Malta are subject to income tax on their worldwide income and certain capital gains.

Companies that are either not resident in Malta or not domiciled in Malta are, subject to any applicable tax treaties, taxable on any income and certain capital gains arising in Malta and on income arising outside Malta that is received in Malta. Such companies are not taxable on any capital gains arising outside Malta whether received in Malta or not (see 6.2.1.).

Taxable profits (or losses) of each year are the profits (or losses) reported in the company's audited financial statements after adjustment for non-deductible expenses and non-taxable income.

The main sources of income that are taxable are the following:

- gains or profits from any trade or business;
- dividends, premiums, interest or discounts;
- any charge, annuity or annual payment;
- rents, royalties, premiums and any other profits arising from property;
- certain capital gains (see 1.4.); and
- any other gains or profits not falling under any of the above.

#### 1.3.2. Exempt income

Specific categories of income or persons are exempt from income tax. Exemptions are granted, for example, on the income of cooperative societies and collective investment schemes (CISs) other than local investment income received by CISs (see 1.6.2.). For the participation exemption of foreign dividends and capital gains, see 6.1.1.

#### 1.3.3. Deductions

Expenses wholly and exclusively incurred in the production of income are deductible from the taxable base. These expenses include the payments of interest, rents, repairs and renewals, bad debts, sales promotion expenditure, scientific expenditure, patent expenditure (capital expenditure being spread over the life of the patent), capital expenditure on intellectual property rights spread equally over 3 years and certain pre-trading expenditure.

In general, business expenditure of a revenue or recurrent nature is normally deductible while that of a capital nature is not. In the latter case, however, plant and machinery and industrial buildings and structures may be depreciated for tax purposes.

#### 1.3.4. Valuation of inventory

Inventories are normally valued at the lower of cost and net realizable value in accordance with International Financial Reporting Standards.

#### 1.3.5. Depreciation and amortization

Tax depreciation is available on industrial buildings and structures, and on plant and machinery. In the case of industrial buildings and structures, an initial deduction of 10% is allowable in the first year in addition to the annual deduction. The annual deduction is calculated on a straight-line basis at a rate of 2% in respect of this type of capital asset.

In respect of plant and machinery, there is no initial deduction and the assets can be depreciated on a straight-line basis over a number of years, for example:

Capital asset	Years
computer and electronic equipment	4
computer software	4
motor vehicles	5 <sup>1</sup>
furniture and fittings	10
construction and excavation equipment	6
catering equipment	6
aircraft	12
ships and vessels	10
electrical and plumbing installations	15
communication and broadcasting equipment	6

1. The depreciable amount is limited to EUR 14,000 if not commercial vehicles.

Capital allowances are generally subject to recapture on the sale of an asset to the extent that the sale proceeds exceed the tax value after depreciation. Any amounts recaptured are added to taxable income for the year of sale or are used to reduce the cost of a replacement asset. To the extent that sales proceeds are less than the asset's depreciated value, an additional deduction is granted.

Where the above capital assets are employed under such terms that the burden of wear and tear falls upon the person making use of the assets in the production of the income but such assets do not belong to that person, tax depreciation as described above is granted to that person as if that person was the owner of the assets.

Under rules applying to certain finance leases, the lessee cannot claim tax depreciation even if such person has the burden of wear and tear. Therefore, only the lessor is able to claim the tax depreciation. Where finance lease contracts do not satisfy the conditions of the new rules, the tax treatment of the lease will be in accordance with the general rule described above.

#### 1.3.6. Reserves and provisions

Transfers to reserves, being amounts set aside for any future purpose or contingency, are generally regarded as an appropriation of profit and are therefore not deductible in arriving at taxable profits.

Provisions for certain contingencies, such as those for doubtful debts, decreases in the value of investments and translation of foreign currency assets and liabilities are not deductible in arriving at taxable profits. A reduction in these provisions does not result in taxable income. On the other hand, provisions for expenditure

that is known to have been incurred, normally referred to as accrued charges, are allowed as deductions.

#### 1.4. Capital gains

Capital gains are taxable when they arise on the disposal of immovable property, business goodwill, copyrights, patents, trademarks, trade names, ordinary shares, units in collective investment schemes and on the maturity or surrender of linked long-term insurance policies.

Various exemptions are available. These include gains derived from the disposal of participating holdings (see 6.1.1.) listed securities other than units in a collective investment scheme investing less than 85% of its total investments in Malta-based securities, intra-group transfers and certain transfers of assets on mergers and divisions.

In general, gains are computed on the difference between the disposal consideration and the cost of the asset. However, in certain cases, such as transfers of immovable property, the tax is generally computed by reference to the transfer value, with various exceptions.

Transfers of immovable property situated in Malta are subject to a 12% withholding tax on the transfer value. Various exceptions to this rule are applicable, e.g. where the transfer is made within 5 years after the acquisition, in which case the transferor has the option to be charged to tax at the said 12% or in accordance with the general rules.

When a transfer of ordinary shares is deemed to be a transfer of a controlling interest, it is considered, for the purposes of calculating the taxable gain, that the shares were disposed of at the higher of the actual sale price and their market value. In general, a transfer of a controlling interest is a transfer where, at any time during the 18 months preceding the transfer, the transferor held:

- 25% or more of the issued share capital or the voting rights; or
- the right to appoint or nominate (or to withhold such appointment or nomination) a director of the company.

Rollover relief applies on the replacement of business assets and on intra-group transfers (see 2.1.).

Companies that are either not resident, or not domiciled in Malta (i.e. incorporated outside Malta), are exempt from tax on capital gains arising outside Malta.

#### 1.5. Losses

##### 1.5.1. Ordinary losses

Trade losses may be set off against income (other than income allocated to the Final Tax Account) of the relevant year and thereafter carried forward indefinitely and set off against the income of the following years. Losses arising due to depreciation, however, may only be carried forward indefinitely and set off against the profits of the same and continuing trade. No carry-back of losses is allowed. Losses which, had they been profits, would have been allocated to the Final Tax Account cannot be set off against any income.

##### 1.5.2. Capital losses

Capital losses may be set off only against capital gains. The set-off is allowed against capital gains of the current and following years.

#### 1.6. Rates

##### 1.6.1. Income and capital gains

The income tax rate for companies is 35%. This tax is levied on profits whether distributed or not.

##### 1.6.2. Withholding taxes

As Malta generally operates a full imputation tax system for residents and non-residents alike (see 1.1.), there is no withholding tax on dividends.

Certain investment income may be subject to a final withholding tax of 15% in terms of the "investment income provisions". Investment income covers, inter alia, interest paid by Maltese-licensed banks, the government of Malta and public corporations and authorities, as well as certain types of discount and premium and capital gains realized on the disposal of shares or units in a Maltese-licensed collective investment scheme which invests less than 85% of its total investments in Maltese-based securities. These investment income provisions do not apply to non-residents.

Investment income payable to a collective investment scheme (CIS) investing at least 85% of its total investments in Malta-based securities attracts a final withholding tax of 10% in respect of corporate or government bonds and 15% with respect to bank interest.

Royalties are not subject to withholding tax.

For the withholding tax on transfers of immovable property, see 1.4. For withholding taxes on payments to non-residents, see 6.3.

#### 1.7. Incentives

##### 1.7.1. Shipping

Shipping organizations are exempt from income tax on income derived from shipping activities as defined in the Merchant Shipping Act. Instead, they are subject to an annual tax based on tonnage.

Non-resident shipping companies are taxable on all profits from the carrying of passengers, mail, livestock or goods shipped in Malta, but not on profits arising from the goods that are brought solely into Malta for transshipment or by a casual call in the port. In effect, most non-resident shipping companies are exempt on a reciprocal basis.

##### 1.7.2. Industrial development

In terms of the Malta Enterprise Act, Malta Enterprise Corporation is entitled to administer incentives available to qualifying businesses in Malta. In this respect, the Minister for Infrastructure, Transport and Communica-

tions with the concurrence of the Minister for Finance may issue Regulations which introduce incentives and other support measures and to transpose in these Regulations any of the provisions of the Business Promotion Act (BPA) and the regulations thereunder. The Malta Enterprise Act also enables Malta Enterprise Corporation to issue and publish Guidelines. The Regulations are to provide the parameters of the aid awarded under the various schemes, whilst the Guidelines are to provide the details as to the terms and conditions to be satisfied in order to be eligible to these incentives and schemes.

With effect from 1 January 2008, the provisions of the BPA relating to investment tax credits have been transposed into this new legislative framework. Within this context, in terms of the Investment Aid Regulations 2008 (IARs), Investment Tax Credits are available in respect of qualifying expenditure incurred on or after 1 January 2008 by qualifying companies, i.e. businesses which carry on a trade or business which consists solely of one or more qualifying activities. Qualifying companies include companies engaged in all types of manufacturing activities (with the exception of production of certain commodities such as motor vehicles and synthetic fibres), information and communications technology, research and development and innovation, logistics operations and activities carried out by a company licensed under the Malta Freeports Act.

Investment tax credits in terms of the IARs are computed as a percentage of qualifying capital expenditure or wage cost of jobs created. These rates are set at 50% for small enterprises, 40% for medium-sized enterprises and 30% for large enterprises. Investment tax credits are deducted from the tax due computed at the normal applicable rate of tax or at reduced rates of tax under tax treaties, as the case may be. (In previous years, the tax could have been computed at reduced rates of tax in terms of the Business Promotion Regulations. However, such reduced rates of tax were only applicable up to year of assessment 2009.)

Incentives still available under the BPA include, inter alia, the following:

- (1) investment allowances over and above the cost of the plant and machinery, land, industrial buildings and structures; and
- (2) reduced rate of tax for reinvested profits in respect of qualifying expenditure. The reduction is equivalent to 19.25%.

Incentives previously provided under the Industrial Development Act remain largely applicable to companies that existed prior to 1 November 2000 and companies undertaking projects approved prior to that date. Thus, for example, SMEs qualifying for the 10-year tax holiday will continue to be eligible for that incentive until its expiration or 2011, whichever is earlier. Large companies will instead be eligible to various investment and other tax credits intended to cover the remaining period of their former tax exemptions and reductions.

### 1.7.3. Freeport activities

The Malta Freeports Act of 1989 established the Malta Freeport Corporation Limited to act as the developer and single authority of the freeport. The freeport is a

customs-free zone located around the developed harbour of Marsaxlokk Bay. Freeport business activities carried out by SMEs existing prior to 1 November 2000 are exempt from duty on documents and transfers and from income tax on business profits up to 2011. Large companies existing prior to 1 November 2000 will instead be eligible for various investment and other tax credits intended to cover the remaining period of their former tax exemption.

Companies licensed under the Malta Freeports Act are included as qualifying companies under the Business Promotion Act and can avail themselves of the incentives provided under that act (see 1.7.2.). Furthermore, with effect from 1 January 2008, such licensed companies are also included as qualifying companies in terms of the investment aid regulations and guidelines pursuant to the Malta Enterprise Act (see 1.7.2.).

### 1.7.4. Research and development activities

Tax credits calculated as a percentage of qualifying research and development (R&D) expenditure are available as a deduction from the tax liability. In addition to direct R&D expenditure, costs incurred for R&D-related training of personnel and hiring of new personnel may qualify. The credit is granted in addition to the normal deduction of the expenditure from taxable income. The applicable percentage varies from 10.5% to 35%, depending on the type of the R&D initiative and expenditure incurred, and whether the taxpayer is a small or medium-sized enterprise and whether the project is EU funded. Benefits granted under the Business Promotion Act (see 1.7.2.) are deducted in determining the amount of the credit. The credit is also subject to state aid intensity limitations.

Research and development activities are increasingly being considered an important sector of Malta's economy. In this regard, various incentives, including tax credits to stimulate enterprises to engage in R&D, are offered under guidelines issued in terms of the Malta Enterprise Act.

### 1.7.5. Other activities

Under certain conditions, companies may also qualify for deductions and tax credits similar to those described in 1.7.4. if they engage in particular activities, including back office operations, development of warehouses, e-business, film servicing and reinvestment of profits.

## 1.8. Administration

### 1.8.1. Taxable period

The income tax year is the calendar year (year of assessment). Corporate profits are assessable on the basis of the immediately preceding accounting year (basis year). For example, the profits of the year ending on 31 December 2009 (basis year) are assessable to income tax in 2010 (year of assessment). An accounting date other than 31 December may be used with the consent of the Inland Revenue and subject to the conditions imposed by it.

### 1.8.2. Tax returns and assessment

A company must file a tax return, with supporting financial statements, by 9 months after the end of the accounting date or 31 March of the relevant year of assessment, whichever is later.

### 1.8.3. Payment of tax

Companies must make three provisional tax payments that have to be effected by 30 April, 31 August and 21 December of each basis period. Furthermore, any unsettled tax must be settled by the due date of the tax return.

The tax due on the profits of a company which has more than 90% of its business interests outside Malta or on foreign-source profits (see 6.1.1.) is payable 18 months after the end of the relevant accounting period or on the date of distribution of such profits, whichever is earlier.

### 1.8.4. Rulings

Advance rulings may be obtained from the Inland Revenue in respect of:

- the application of the general anti-avoidance provisions in relation to any transaction;
- whether a participation is held in furtherance of the shareholder's business in determining a participating holding (see 6.1.1.);
- the tax treatment of financial instruments; and
- the tax treatment of transactions that include an element of international business.

Rulings will survive any changes in legislation for a period of 2 years. In all other circumstances, a ruling will be binding for a period of 5 years. Renewals may be requested.

## 2. Groups of Companies

### 2.1. Group treatment

A company that is part of a group of companies may surrender losses to another corporate member of the group. As regards capital gains, rollover relief on the transfer and replacement of business assets and on the transfer of assets within a group of companies is granted.

Two companies are deemed to be members of a group of companies for tax purposes if they are resident in Malta and not resident in any other country for tax purposes and if one of the companies is a 51% subsidiary of the other or both are 51% subsidiaries of a third company that is resident in Malta. For capital gains purposes, a group of companies is further defined to include companies that are controlled and beneficially owned directly or indirectly to the extent of more than 50% by the same shareholders.

Intra-group dividends, interest, royalties and management charge income, etc. are taxed in the same way as income received from non-group companies. As a result of the imputation system (see 1.1.), the payment of divi-

dends to resident companies does not result in any additional taxation.

All the group companies have to file a separate tax return, as no combined grouping or consolidated returns are allowed.

## 2.2. Intercorporate dividends

Resident and non-resident companies in receipt of dividends from a Maltese resident company will not suffer any further tax in view of the application of the imputation system (see 1.1.).

## 3. Other Taxes on Income

### 3.1. Oil tax

A petroleum profits tax is levied as income tax, although the taxable base is computed differently. Special rules for the sharing of petroleum revenue and for the establishment of the taxable base also exist. Profits deriving from production-sharing contracts signed after 1 January 1996 are taxed at the 35% rate.

### 3.2. Insurance profits tax

Insurance business profits are calculated in accordance with special provisions, which distinguish between insurers who carry on a general insurance business and those who carry on a long-term business (such as life insurance). The profits are still chargeable to tax at the 35% rate but taxable income is ascertained by the application of these special provisions.

## 4. Taxes on Payroll

### 4.1. Payroll tax

There is no payroll tax.

### 4.2. Social security contributions

Social security contributions are payable by the employer at the rate of 10% of the employee's weekly basic wages up to a maximum contribution of EUR 32.91 per week. The employer also deducts a similar contribution from the wages of the employee and pays the whole to the government on a monthly basis, along with income tax deductions.

The employer's share of social security contributions is deductible for income tax purposes.

## 5. Taxes on Capital

### 5.1. Net worth tax

There is no net worth tax.

## 5.2. Real estate tax

There is no real estate tax.

## 6. International Aspects

### 6.1. Resident companies

For the concept of residence, see 1.2.1.

#### 6.1.1. Foreign income and capital gains

Income from specified foreign sources (i.e. foreign investment income including capital gains, profits of a foreign permanent establishment and profits derived from foreign investments, assets or liabilities of a bank licensed in Malta) is taxed at the rate of 35%.

With effect from 1 January 2007, a participation exemption has been introduced, whereby dividends and capital gains derived from a participating holding in a non-resident company are exempt from income tax. To qualify as a participating holding, the shareholding of the Maltese company in the foreign company must satisfy at least one of the following conditions:

- the holding is 10% or more of the equity capital of the foreign company;
- the cost of the holding is at least EUR 1,164,000 or its equivalent in foreign currency and the holding is held for an uninterrupted period of at least 183 days;
- the holding confers a level of control (director on the board) or rights related to the acquisition of the balance of equity shares in the foreign company; or
- the shares in the foreign company are held to further the Maltese company's business and such holding is not held as trading stock for the purpose of a trade.

The applicability of the participation exemption with respect to dividends is subject to a number of anti-abuse provisions. Dividends received from participating holdings will not be subject to the anti-avoidance provisions if the investee:

- is resident or incorporated in a country or territory which forms part of the European Union; or
- is subject to any foreign 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 any foreign tax at a rate of at least 5%.

On a distribution of dividends from foreign-source income to non-resident shareholders, the latter would be entitled to a full or partial refund of tax paid by the Maltese company, depending on the nature of the foreign income.

In general, the tax refund applicable upon the distribution of profits whether local or foreign-sourced, will be six sevenths of the 35% underlying tax; thus, the Maltese tax burden on dividends received from Maltese companies after receipt of the tax refund will be 5%. In the case of trading income, the effective tax payable

may be reduced further where the Maltese company suffered foreign taxes.

The six-sevenths tax refund will be reduced to five sevenths in those cases where the distributed profits are derived from passive interest or royalties or from a participating holding which does not satisfy the anti-abuse provisions.

It is not possible for the shareholder to claim a six-sevenths or five-sevenths refund where the distributing company would have claimed double taxation relief on income allocated to the foreign income account. Instead, the shareholder is entitled to claim a two-thirds refund.

With respect to income received from a participating holding, where the Maltese company opts not to benefit from the participation exemption (see above) and consequently pays tax on the income or capital gains, the refund to the shareholder upon a distribution is increased to 100% (see example below). The entitlement to the 100% refund in respect of dividends derived from a participating holding are also subject to the same anti-abuse provisions applicable to the participation exemption. The interaction of these provisions with the provisions relieving double taxation, including the FRFTC (see 6.1.3.), result in no or in minimal taxation in Malta on foreign-source income.

#### Example

Malta Private Company Ltd (MPCo) is owned by a company resident in Country X (XCo). The interests of the MPCo include a shareholding of more than 10% in a manufacturing company in Country Y (YCo) (profits taxed at 10%) and a minority 9% shareholding in a wholesale distributing company in Country Z (ZCo) (profits taxed at 30%). The amounts received by XCo are computed as follows:

	YCo	ZCo
profits relative to MPCo's shareholding	2,000	2,000
Country Y corporation tax	(200)	
Country Z corporation tax		(600)
dividend paid to MPCo	1,800	1,400
Country Y withholding tax	(430)	
	1,370	
dividend grossed up by withholding and underlying tax	2,000	2,000
Maltese income tax at 35%	700	700
double tax relief	(630)	(600)
net Maltese tax	70	100
profits available for distribution and paid to XCo		
– refund of Maltese income tax:		
– full refund	1,300	1,300
– two-thirds refund	70	100
total received by XCo	1,370	1,400

The two-thirds refund is calculated on the tax suffered by MPCo before deduction of double tax relief. In the example, this would be two thirds of 700, but since Maltese tax actually paid amounts to only 100, the refund would be limited to 100.

Losses arising outside Malta are allowed as a deduction if the losses, had they been profits, would have been taxable in Malta.

### 6.1.2. Foreign capital

There is no net worth or real estate tax.

### 6.1.3. Double taxation relief

The legislation provides for four types of relief from double taxation of foreign-source income, i.e. treaty relief, Commonwealth relief, unilateral relief and flat-rate foreign tax credit.

Treaty relief takes the form of a tax credit granted for foreign tax paid on income received from a country with which Malta has concluded a tax treaty and which treaty makes provision for double taxation relief. The amount of the credit is the lower of Maltese tax on the foreign income and the foreign tax paid. For a list of Malta's tax treaties, see 6.3.5.

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 those countries that provide a similar relief to Maltese-source income.

The unilateral relief works very much in the same way as the treaty relief except that it only applies where treaty relief is not available. With regard to investments held by resident companies in foreign companies, the relief also extends to the foreign underlying taxes, i.e. the tax suffered by the foreign company on the profits that have been distributed. This relief meets the requirements of the EU Parent-Subsidiary Directive in respect of inbound dividends.

The flat-rate foreign tax credit (FRFTC) is also a form of unilateral relief only available to companies. For administrative ease, relief from double taxation may be obtained under this method by pooling together foreign income from different sources. The relief is given where other double taxation relief is not available. The relief becomes available upon submission of an auditor's certificate to the effect that the income in question is foreign-source income (see 6.1.1.).

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 taxable income. Taxable income is subject to tax at the 35% rate and the amount of the flat-rate foreign tax credit is deducted from the tax charge. The credit is limited to 85% of the Maltese tax due before deducting the credit itself. The workings of the credit are best illustrated as follows:

#### Example

net foreign income received	1,000
flat-rate foreign tax credit (25% of 1,000)	250
	<hr/>
less expenses	1,250
taxable income	(350)
	<hr/>
tax thereon at 35%	315
less flat-rate foreign tax credit (the lower of 250 and 85% of 315)	(250)
net Maltese tax payable	<hr/> 65

## 6.2. Non-resident companies

Non-resident companies are companies that are not incorporated in Malta and the business of which is not managed or controlled in Malta.

### 6.2.1. Taxes on income and capital gains

Non-resident companies are generally taxed at the rate of 35% on income and certain capital gains arising in Malta. Non-residents are exempt from tax on any capital gains derived on the disposal of shares in a company the assets of which do not consist wholly or principally of immovable property situated in Malta.

Interest and royalties derived by non-residents are exempt, provided that the recipient does not have a permanent establishment in Malta. Non-resident companies in receipt of dividends from a Maltese resident company will not suffer any further tax in view of the application of the imputation system (see 1.1.).

### 6.2.2. Taxes on capital

There is no net worth or real estate tax.

### 6.2.3. Administration

Other than the withholding tax that may be applicable to any income subject to tax in Malta payable to a non-resident company (see 6.3.4.), the latter is in general subject to the same administrative procedures applicable to a resident company (see 1.8.).

## 6.3. Withholding taxes

### 6.3.1. Dividends

Dividends paid to non-resident companies are not subject to withholding tax.

### 6.3.2. Interest

Interest paid to non-resident companies is not subject to withholding tax, provided that the debt claim in respect of which the interest is paid is not effectively connected with a permanent establishment of the non-resident in Malta.



### 6.3.3. Royalties

Royalties paid to non-resident companies are not subject to withholding tax, provided that such royalties are not effectively connected with a permanent establishment of the non-resident in Malta.

### 6.3.4. Other

Where taxable income (e.g. rents and income of a permanent establishment) is paid to non-resident companies, a tax of 35% (25% if paid to a person other than a company) must be withheld. A lower rate may be agreed with the tax authorities. The withholding is a precautionary payment and the final tax liability, additional payment or refund due is determined upon the filing of the non-resident company's tax return.

### 6.3.5. Withholding tax rates chart

The following chart contains the withholding tax rates that are applicable to dividend, interest and royalty payments by Maltese companies to non-residents under the tax treaties currently in force. Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable. Under domestic law, there are no withholding taxes on such payments to non-residents.

	Dividends Individuals, Qualifying companies companies (%) (%)	Interest <sup>1</sup> (%)	Royalties (%)
<b>Domestic Rates</b>			
Companies:	0	0	0
Individuals:	0	0	0
<b>Treaty Rates</b>			
<i>Treaty With:</i>			
Albania	0	0	5
Australia	0	0	15
Austria	0	0	5
Barbados	0	0	15
Belgium	0	0	10
Bulgaria	0	0	0
Canada	0	0	15
China (People's Rep.)	0	0	10
Croatia	0	0	0
Cyprus	0	0	10
Czech Republic	0	0	0
Denmark	0	0	0
Egypt	0	0	10
Estonia	0	0	10
Finland	0	0	0
France	0	0	10
Georgia	0	0	0
Germany	0	0	0
Greece	0	0	8
Hungary	0	0	10
Iceland	0	0	0
India	0	0	10
Ireland	0	0	0
Isle of Man <sup>4</sup>	0	0	0

	Dividends Individuals, Qualifying companies companies (%) (%)	Interest <sup>1</sup> (%)	Royalties (%)
Italy	0	0	0/10 <sup>5</sup>
Korea (Rep.)	0	0	10
Kuwait	0	0	0
Latvia	0	0	10
Lebanon	0	0	0
Libya	0	0	15
Lithuania	0	0	10
Luxembourg	0	0	0
Malaysia	0	0	15
Montenegro	10	5	10
Morocco	0	0	10
Netherlands	0	0	10
Norway	0	0	10
Pakistan	0	0	10
Poland	0	0	10
Portugal	0	0	10
Qatar	0	0	0
Romania	0	0	5
San Marino	0	0	0
Singapore	0	0	7/10 <sup>6</sup>
Slovak Republic	0	0	0
Slovenia	0	0	5
South Africa	0	0	10
Spain	0	0	0
Sweden	0	0	0
Syria	0	0	10
Tunisia	0	0	12
United Arab Emirates	0	0	0
United Kingdom	0	0	10

- Many treaties provide for an exemption for certain types of interest, e.g. interest paid to the state, local authorities, the central bank, export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.
- The zero rate applies to copyright royalties, excluding films.
- The zero rate applies to copyright royalties, including films.
- Effective from 1 January 2011.
- The zero rate applies, inter alia, to interest paid by public bodies.
- The 7% rate applies if the interest is received by a bank.

## 7. Anti-Avoidance

### 7.1. General

A general anti-avoidance rule is provided for under Maltese tax legislation. An advance ruling can be requested on the application of the rule to any transaction.

Furthermore, specific anti-avoidance provisions apply. In particular:

- the exploitation of the investment income provisions (see 1.6.2.), involving two or more corresponding or circular transactions carried out directly or indirectly by the same person, can be challenged; and
- the abuse of the flat-rate foreign tax credit (see 6.1.3.) can be counteracted.

## 7.2. Transfer pricing

There is no specific transfer pricing legislation. However, anti-avoidance legislation exists with regard to transactions concluded between related parties, one of whom is resident and the other non-resident.

## 7.3. Thin capitalization

There is no thin capitalization legislation.

## 7.4. Controlled foreign company

There is no CFC legislation.

## 8. Value Added Tax

### 8.1. General

Malta applies a VAT system under which tax is levied on the supply of goods and services in Malta and the importation of goods into Malta. The Value Added Tax Act is based on the VAT Directives of the European Union.

### 8.2. Taxable persons

Every person who in the course of a trade or profession makes taxable and/or exempt with credit supplies of goods and services in Malta is a taxable person and is obliged to register for VAT purposes in Malta and charge VAT that might be applicable.

Entrepreneurs whose total yearly income does not exceed the following thresholds:

- for activities consisting principally of the supply of goods, EUR 35,000;
- for activities consisting principally of the supply of services with a low value added, EUR 24,000; and
- for activities consisting principally of other activities, EUR 14,000,

may opt out of the VAT refund system. This means that such persons would be registered as a small undertaking and would neither charge VAT on their supplies nor claim any input VAT suffered.

### 8.3. Taxable transactions

The following transactions are taxable:

- the supply of goods and services in Malta by an entrepreneur in the course of a business;
- the intra-Community acquisition of goods in Malta by an entrepreneur in the course of a business or by a legal entity that is not an entrepreneur;
- the intra-Community acquisition in Malta of new means of transport by any person; and
- the import of non-Community goods into Malta.

Taxable persons also account for VAT on the import of taxable services under the reverse charge system.

### 8.4. Taxable amount

The general rule is that for VAT purposes the taxable value consists of the total consideration payable for goods and services supplied, excluding the VAT itself. The taxable value includes the following:

- taxes, duties, levies, fees and other charges; and
- commissions, packing, transport and insurance costs and other incidental expenses.

Price reductions, discounts and rebates are deducted.

The taxable value of intra-Community acquisitions is the taxable value of a corresponding supply made in Malta, including any excise duties paid in other Member States.

The taxable value of any imported good is the ad valorem value thereof established in the same manner provided for in the Import Duties Act, i.e. cost, insurance and freight (c.i.f.) and increased by any import duties, levies and excise duties.

Input VAT is set off against output VAT, and the balance is accounted for every 3 months.

### 8.5. Exemptions

Exemptions without deduction of input VAT apply to the sale and letting of immovable property (other than property licensed in terms of the Malta Travel and Tourism Services Act), banking and insurance activities, cultural and religious services, services related to certain independent services, services provided by independent groups and non-profit-making organizations to their members, lotteries and gaming activities, postal services, health and welfare, education, certain investment services and broadcasting.

### 8.6. Rates

The standard rate of VAT is 18%. A reduced rate of 5% applies to the supply of holiday accommodation, electricity, confectionery and similar items, medical accessories, items for the exclusive use of the disabled, printed matter, works of art, collector's items, antiques, domestic care services and admissions to museums, art exhibitions, concerts and theatres, minor repairs of bicycles, shoes, leather goods, clothes and household linen.

The zero rate (exemption with deduction of input VAT) applies to, inter alia, exports outside the European Union, intra-Community supplies to persons who identify themselves by means of a VAT identification number issued by another Member State, international transport of goods and passengers, the supply, repair or provisioning of ships and aircraft, gold, food for human consumption, certain domestic passenger transport services, pharmaceuticals, and goods and supplies on board cruise liners.

### 8.7. Non-residents

Non-residents are taxable in the same manner as residents if they carry out any taxable transaction in Malta. Such persons may appoint a representative to exercise their rights and fulfil their obligations under VAT law.

## 9. Miscellaneous Indirect Taxes

### 9.1. Capital duty

There is no capital duty as such, but a nominal registration fee is payable upon registration of a company. The fee ranges from EUR 210 to 2,250, depending on the amount of the authorized share capital. Any subsequent increase in the authorized share capital will similarly trigger the registration fee, but once the EUR 2,250 is reached, no further registration fee will be payable on increases in the authorized capital. An increase in the issued share capital will not trigger the fee.

No taxes or duties are levied on the issue of securities, debentures or loan agreements, or the capitalization of reserves (stock dividends).

### 9.2. Transfer tax

#### 9.2.1. Immovable property

Stamp duty is levied on documents evidencing transfers of immovable property at a rate of 5% of the higher of the consideration and the real value.

A reduced rate applies to a dwelling house or property that is acquired to be used as a dwelling house. In this case, the first EUR 116,468.67 of the cost is dutiable at a rate of 3.5%. In the case of transfers *causa mortis* of a dwelling house that had been used as the ordinary residence of the deceased, no duty is levied on the first EUR 35,000 of the value. If the beneficiary also occupies such dwelling, the 3.5% rate also applies to the next EUR 35,000 of the value.

An exemption from stamp duty applies, inter alia, to deeds partitioning immovable property inherited by co-owners.

#### 9.2.2. Shares, bonds and other securities

Stamp duty is levied upon a transfer of marketable securities at a rate of 2% of the higher of the consideration and the real value. However, a 5% rate applies to a transfer of marketable securities in a company if 75% or more of that company's assets consists of immovable property.

An exemption from stamp duty is provided, inter alia, on transfers of securities listed on the Malta Stock Exchange and inter vivos transfers of foreign marketable securities to persons resident in Malta effected through a local bank or a person holding an investment services licence.

### 9.3. Stamp duty

Apart from the situations described in 9.2., stamp duty is charged as follows:

- EUR 16.31 annually on bank credit card facilities;
- 0.1% of the sum insured on any policy of life insurance which is not renewable annually; and
- 10% of the premium in the case of all other insurance policies (except for policies covering risks situated outside Malta, aviation, marine cargo, marine hull and boat, export credit and surety ship and medical cover, which are exempt).