



Corporate Taxation

www.promethean.mt

About us

Promethean Corporate Services (**"Promethean"**) is a full-service legal and tax firm that offers cross-border solutions. Promethean Corporate Services is comprised of Promethean Advisory Limited with Company Registration No: C 33734 is authorised and regulated by the Malta Financial Services Authority (**"MFSA"**) to act as a Company Service Provider (Category C) in terms of the Company Services Providers Act. Chapter 529 of the Laws of Malta. Promethean Trustees Limited with Company Registration No: C 51310 is authorised to act as a Trustee, act as an Administrator and provide Fiduciary Services in terms of the Trusts and Trustees Act. Chapter 331 of the Laws of Malta. Promethean rebranded from an earlier but equally successful iteration and is part of a global network of companies, with sister firms that provide similar services in Milan, the United Kingdom and Guernsey.

Malta's Corporate Tax Systems

As a European Union (**"EU"**) Member state, forming part of the Euro Zone, Malta is a respected and well-regulated jurisdiction whose financial services legislation conforms to international best practices. Malta's corporate and financial services laws are robust, comprehensive, sophisticated, and business friendly. The company formation process in Malta is efficient, taking generally less than three days from the submission of the pertinent documentation, to be completed. No withholding taxes, stamp duties, or exchange control restrictions apply on the distribution of profits from the Maltese company to its shareholders and dividends can be expatriated without any restrictions. A Malta company can be utilized to carry out any type of business – be it investment activities, asset holding, trading, aircraft registration, sea vessel registration, captive insurance, and remote gaming, amongst others. A limited liability company may be registered by the shareholders or their authorized agent. Promethean Advisory Limited may be engaged to carry out all the necessary formalities of the incorporation and annual maintenance of Malta-registered companies. We may also hold the shares of a company as a duly authorised mandatory via our sister company Promethean Trustees Limited.

Why Malta?

Malta presents a range of advantages for entrepreneurs and businesses. These advantages include:

1. Entrepreneurs and businesses can leverage Malta's EU membership to benefit from the EU's free trade policies and mobility regulations. Furthermore, Malta's effective tax rates, coupled with the possibility of refunds, offer a cost-effective way to conduct business.
2. Malta's highly educated and multilingual workforce is another factor that makes it an attractive location for businesses. Companies can take advantage of a workforce that is well-versed in various languages, including English, Italian, and French.
3. Finally, Malta's Mediterranean lifestyle and rich history offer expatriates an excellent quality of life. The island's cultural diversity, temperate climate, and scenic beauty make it an appealing destination for individuals seeking to relocate.

Onboarding process

As your Corporate Service Provider, Promethean Advisory Limited is obligated to perform Customer Due Diligence (“**CDD**”) in line with Anti-Money Laundering/Countering Financing of Terrorism (“**AML/CFT**”) requirements. This entails requesting identification and verification documents for proposed directors, shareholders, and other corporate entities involved in the structure. The CDD process also requires documentation that establishes the source of wealth and source of funds.

Promethean Advisory Limited is committed to providing quality service and support throughout the onboarding process, ensuring a smooth setup of the intended structure. We understand the importance of fulfilling our AML/CFT obligations and strive to complete the CDD process in a timely manner.

Registration Procedure and Formation Formalities

A limited liability company is validly constituted once a memorandum and articles of association is entered into and subscribed by at least two persons (unless a single member company is opted for), and a certificate of registration is issued in respect thereof by the Malta Business Registry. A limited liability company is the most common form of business entity in Malta. It may have the status of a public or private company.

Fact Box

Registered Address	All companies which are registered in Malta must have a Malta registered address.
Objects	The Memorandum of Association must specify the objects for which the company is set up. The objects may not be simply stated to be any lawful purpose or trade in general.
Capital Requirements	In order to set up a private company, one must have a minimum authorized share capital of €1,165 and €46,588 to set up a public company – or the equivalent in foreign currency. With regards to a private company, at least 20%, and in respect of a public company at least 25% of the nominal value per share is to be paid upon signing the Memorandum of Association .
Objects	The Memorandum of Association must specify the objects for which the company is set up. The objects may not be simply stated to be any lawful purpose or trade in general.
Shareholding	A private company may have up to 50 shareholders; however, the maximum number of shareholders of a public company is not capped. Usually, the minimum number of shareholders is set at 2. There also exist instances where a single-member company may be incorporated.
Directorship	In a private company, there must be at least 1 director, whilst a public company should have at least 2 directors.

Company Secretary	Any company must have a company secretary who is not necessarily a resident of Malta.
Meetings	Every company must hold an Annual General Meeting. Every general meeting other than the annual general meeting is called an extraordinary general meeting.
Corporate Compliance Obligations	Annual returns must be filed with the Malta Business Registry along with a payment of €100 to €1,400, depending upon the authorised share capital. Annual accounts should also be filed with the Malta Business Registry along with the auditor's and director's reports.

Substance in a Malta Company

The concept of substance has assumed particular importance in the context of Malta's company formation, international tax planning, and corporate structure restructuring. In this vein, the Organization for Economic Cooperation and Development ("**OECD**") has introduced the Base Erosion and Profit Shifting ("**BEPS**") framework to combat the employment of tax avoidance mechanisms that leverage gaps and mismatches in tax laws to circumvent tax obligations. As a member of the OECD, Malta is bound by the provisions of this framework. Consequently, foreign entities that intend to register a company in Malta must take into account the substance requirements that apply to their proposed business enterprise.

Promethean Advisory Limited recommends taking the below measures when setting up a Malta Company:

1. The Board of Directors must comprise at least 50% Maltese nationals or people with a permanent place of residence in Malta.
2. Business decisions must be made in Malta, and minutes of regular board meetings and annual general meetings must be recorded locally.
3. The company must have a physical presence in Malta, such as an office and employees.

It is important to note that Malta's substance requirements can increase the costs for a company that lacks substance. However, being challenged by the tax authorities for the lack of substance can be much more costly and damaging in the future.

Basis of Taxation

Any individual who is considered to be ordinarily resident and domiciled in Malta is subject to Malta tax on a worldwide basis, that is, on any income or gains whether arising in Malta or otherwise. Individuals that are either resident or domiciled in Malta are subject to Malta tax on income and gains arising in Malta and on so much of their income arising outside Malta (excluding capital gains) that is remitted to or received in Malta. Income subject to Malta tax includes capital gains arising on the transfer of immovable property, securities, business, permits, goodwill, and intellectual property rights.

A Malta company is deemed to be resident in Malta for tax purposes when such a company is incorporated in Malta. A company is also considered to be a Malta resident company by way of

its management and control being exercised in Malta. A Malta company is taxed at a flat rate of 35%. However, the overall tax payable in Malta may be substantially reduced through the tax refund mechanism, as outlined hereunder.

Full Imputation System

Malta operates a full imputation system of taxation with respect to dividends. This implies that the tax suffered by a Malta registered company on those profits that it distributes as a dividend in favour of its shareholder(s) is credited in full against the Malta tax liability of that shareholder.

Since the 35% tax rate applicable to companies is equivalent to the maximum progressive rate of tax applicable to individuals, a dividend distribution would typically result in no further tax payable at the shareholder level.

Tax Accounting

Malta tax legislation provides for a system of tax accounting whereby a company is required to allocate its distributable profits to the following five separate taxed accounts depending on the source and nature of the said profits, which in turn, give rise to different refunds, claimable at shareholder level, upon a distribution of dividends from the company.

Final Taxed Account ("FTA")	All companies which are registered in Malta must have a Malta registered office.
Immovable Property Account ("IPA")	Profits, gains, or income subject to Malta tax which result from activities undertaken in relation to immovable property situated in Malta and the annual equivalent of the market rental value of property owned by the company or a related person and used by the company.
Foreign Income Account ("FIA")	Passive foreign source income and profits attributable to a foreign permanent establishment.
Maltese Taxed Account ("MTA")	Profits subject to tax in Malta which do not fall to be allocated to the FTA, FIA, or IPA.
Untaxed Account ("UA")	Profits which are not allocated to the FIA, MTA, IPA, and FTA.

Tax Refunds

Tax refunds may be claimed by resident and non-resident shareholders alike. Tax refunds may be claimed on income allocated to the MTA and the FIA. No refunds may be claimed on income allocated to the FTA, IPA, and UA. A claim for a refund of tax by a registered shareholder of a Malta company is paid by the Malta Tax and Customs Administration ("MTCA") within 14 days from the end of the month of a valid application being submitted, and the successful vetting of the application by MTCA, thus having no significant impact on the cash flow of a company.

The following are the four types of tax refunds, which are available, and which may be claimed by shareholders, upon a distribution of dividends by the Malta company.



6/7ths Refund

Shareholders are generally entitled to a refund of 6/7ths of the total tax paid at the level of the company when no claim for double tax relief is made. The total effective tax rate payable in Malta after claiming this refund is of 5%.

5/7ths Refund

Shareholders are entitled to a tax refund of 5/7ths when the company derives income that qualifies as passive interest or royalties and no claim for double tax relief has been made. The total effective tax rate payable in Malta after claiming this refund is of 10%.

2/3rds Refund

Shareholders are entitled to claim a tax refund of 2/3rds of the tax paid at the level of the company when a claim for double tax relief has been made by the company.

Full Refund

Applicable to income derived from a participating holding (as outlined on page 07).

Practical Illustrations

Income Stream	FIA/MTA	Participating Holding	Passive Interest & Royalties	Any Other Income
Distribution out of:	FIA/MTA	FIA	FIA	FIA/MTA
COMPANY LEVEL				
Income	€1000	€1000	€1000	€1000
Flat Rate Foreign Tax Credit (" FRFTC ") (as outlined on page 11) @ 25%	€250	-	-	-
Chargeable Income	€1250	€1000	€1000	€1000
Tax @ 35%	€438	€350	€350	€350
Less: FRFTC	(€250)	-	-	-
Tax Due	€188	€350	€350	€350
TAX REFUND	2/3rds	Full Refund	5/7ths	6/7ths
SHAREHOLDER LEVEL				
Net Dividends	-	€650	€650	€650
Tax at source	-	€300	€300	€300
Gross dividend	-	€1000	€1000	€1000
Tax on Dividend	€188	€350	€350	€350
Full Imputation Credit	-	(€350)	(€350)	(€350)
Tax Refund	(€125)	(€350)	(€250)	(€350)
EFFECTIVE TAX BURDEN	63, i.e. 6.3%	0, i.e. 0%	100, i.e. 10%	50, i.e. 5%



The Malta Holding Company

A Malta holding company can serve a variety of objectives both fiscal and non-fiscal, such as the re-characterisation of income, intra-group financing, holding, and leasing of real estate situated in and outside Malta, holding and leasing of brands, trademarks, trade- names and other intangible asset and the spreading of the investor's risk, amongst others. A Malta holding company is also generally used to hold assets and participations in other companies located whether located within the EU and not.

Equity Holding and Participating Holding

Malta companies indeed constitute an ideal vehicle for holding activities, given the participation exemption available to such companies. Initially, one needs to establish if holding of shares qualifies as equity holding. For there to be an equity holding, the company needs to hold shares in a company which is not a property company, and the shareholding entitles the shareholder to at least TWO of the following rights:

which holding confers an entitlement to at least 10% of any two of the following:

- Right to vote;
- Right to profits available for distribution to shareholders; and
- Right to assets available for distribution on winding up.

Once equity holding has been confirmed, one needs to establish if the equity holding is a participating holding. A participating holding arises where:

- a. a company holds directly at least 5% of the equity shares of a company whose capital is wholly or partially divided into shares and such holding gives right to at least 5% of any TWO of the following:
 - Right to vote;
 - Right to profits available for distribution to shareholders; and
 - Right to assets available for distribution on winding up.

OR

- b. a company is an equity shareholder which holds an investment representing a total value of a minimum amount of €1,164,000 for a period of not less than 183 days.

OR

- c. a company is an equity holding and the equity shareholder is entitled to sit on the Board or appoint a person to sit on the Board.

OR

- d. a company is an equity holding and the equity shareholder has the right to call for or acquire the entire balance of the equity shares of the company.

OR

- e. a company is an equity holding and the equity shareholder is entitled to first refusal in case of a disposal, redemption, or cancellation of the shares of the company.

OR

- f. a company is an equity holding and the holding of such shares is for the furtherance of its own business (i.e. not held as stock for the purpose of a trade). *This point is very subjective and if it is the only option one should seek comfort by writing to CfR before applying it.*

Participation Exemption

Once a participating holding is confirmed, the following Anti-Abuse (Safe Harbour) Provisions must be met in order to qualify for the Participation Exemption. The below Anti-Abuse Provisions are only to be met in case of dividend income and are not required for gains from the disposal of a participating holding.

The participating holding satisfies ONE of the below conditions:

1. is resident or incorporated in a country within the EU; or
2. is subject to tax of at least 15%; or
3. does not have more than 50% of its income derived from passive interest / royalties.

OR

If none of the above conditions are satisfied then BOTH of the following conditions must be satisfied:

1. the equity holding of the Malta company in the Foreign company is not a portfolio investment (*i.e. the Foreign company must derive less than 50% of its income from portfolio investments*)

AND

2. the Foreign company or the passive interest / royalties have been subject to a minimum tax rate of at least 5%.

Income derived from the participating holding in a body of persons resident for tax purposes in a jurisdiction included in the EU list of non-cooperative jurisdictions for a minimum period of 3 months during the financial year may also restrict a company from qualification of participation exemption. Other conditions may also give rise to a participating exemption restrictions.

As from the year of assessment 2013, a holding company in a partnership en commandite, the capital of which is not divided into shares, will be deemed to be a participating holding if the above conditions are met. The participation exemption regime also extends to permanent establishments situated outside Malta. Upon the pertinent conditions being satisfied, income or gains which are derived from a foreign permanent establishment by a Malta company are exempt from Malta tax.

In the event that dividends are received from a participating holding in a body of persons that does not satisfy the above anti-abuse mechanism, the five-sevenths refund would apply (yielding a net effective tax paid in Malta of 10%). The Malta company can either opt to avail itself of the exemption or pay tax at the rate of 35%, after which the shareholders of the Malta company would be able to claim a 100% refund of tax paid at the level of the Malta company. The latter option is particularly useful where proof of tax paid is required in the foreign jurisdiction.

Relief from Double Taxation

Income may, in certain circumstances, be taxable both in Malta and in another jurisdiction. This means that, in theory, the same income/person could be taxable twice in two jurisdictions giving rise to double taxation. Malta affords double taxation relief by way of credit and contemplates three main mechanisms for the elimination of double taxation as follows:

- Double tax treaty relief – this relief may be claimed by virtue of the applicable provisions of Malta’s double tax treaties. Currently, Malta has over 70 double tax treaties in force, most of which are based on the OECD Model Convention. Given that Malta is a credit country, in most of its tax treaties, Malta has agreed to relieve double taxation using the credit method. Malta tax law further provides that relief should be provided on a country-per-country basis. Most of the treaties provide for a reduced withholding tax on dividends, interest, and royalties paid to a resident of Malta, in the form of an ordinary credit for actual tax paid;

- ☑ Unilateral relief – a type of relief that may be claimed when a double taxation agreement is not in force. Any overseas tax suffered may be allowed as a credit against the tax chargeable in Malta which is levied on the gross amount. The credit shall not exceed the total tax liability in Malta on the receipt. Unilateral relief for underlying tax is also available where the taxpayer is a Maltese company that holds more than 10% of the voting power of the overseas company paying the dividend (subject to certain conditions being met); or
- ☑ Flat Rate Foreign Tax Credit (“**FRFTC**”) – this credit may be claimed by a company registered in Malta with respect to income and gains arising outside Malta. The FRFTC is a 25% tax credit on the net foreign-sourced income. To claim this kind of relief, the company must be expressly empowered to receive and allocate income to its foreign income tax account. Documentary evidence must be available that indicates that such income or gains fall to be allocated to the FIA. The FRFTC may be claimed by companies resident and domiciled in Malta, companies resident in Malta, and branches of overseas companies.

Branches of Foreign Companies

When a foreign company sets up a place of business in Malta it must be registered as an overseas company. The registration applies to the company and not to the branch and the branch itself is not recognised as a separate entity for company law or income tax purposes. Unlike a company registration scenario, when registering a branch, no minimal capital is requested at registration.

Maltese company law offers the possibility to companies incorporated or constituted outside Malta to conduct business in or through Malta by using a branch or a place of business in Malta. This creates a viable alternative when such companies opt not to register a separate legal entity yet conduct business in or through Malta by an extension of their foreign corporate vehicle. All fiscal benefits granted to companies incorporated or resident in Malta are extended to branches.

Every company that has registered a branch or a place of business in Malta must file on an annual basis, audited financial statements pertaining to the operations conducted by the Malta branch or place of business. Branches of overseas companies are taxed in the same manner as Malta companies and are subject to the tax at the rate of 35%. Malta does not levy a branch remittance tax or similar tax on the profits deemed to be distributed to the head office. Moreover, the tax refund system applies to Malta branches of overseas companies.

A Malta branch of an overseas company may likewise benefit from a participation exemption. Where the holding of shares by the Malta branch constitutes a participating holding pursuant to the relevant provisions of the Maltese income tax legislation, the income received by the branch from that participation is exempt from tax in Malta.

The procedures for setting up a branch are simpler, and the costs are lower, but the differences are marginal. Dividends and interest paid by a subsidiary to its foreign parent company are not subject to any further tax (subject to particular statutory conditions being met). Branch office profits are not subject to any withholding taxes at the time of transfer or later.

Re-domiciliation / Continuation of Companies to Malta

A company formed, incorporated, or registered outside Malta may, subject to certain conditions, request to be registered in Malta as a company continuing to Malta. Conversely, a company registered and incorporated in Malta may seek to continue its existence in an approved country or jurisdiction outside Malta, subject to certain provisions.

With regard to the Malta tax treatment applicable in respect of a company continued from Malta, Malta does not impose any exit taxes on the continuance of a company outside Malta.

On the other hand, the continuation of a company to Malta would have no consequences for local tax/ duty purposes under the laws of Malta. Accordingly, the continuation of a foreign company to Malta would not trigger any Maltese entry tax or other similar taxes. Additionally, with effect from the date of issuance by the Malta Business Registry of a Provisional Certificate of Continuation in favour of the company, the company would be, provided that a Final Certificate of Continuation is issued in its favour by the Malta Business Registry, characterized and treated as a company ordinarily resident and domiciled in Malta in terms of Maltese income tax legislation.



Other Benefits of The Maltese Corporate Tax System

- 01** On repatriation, dividends, interest & royalty payments are not subject to Maltese withholding taxes.
- 02** There are no Controlled Foreign Corporation ("**CFC**") rules or thin capitalization restrictions.
- 03** Duty on documents is not paid by Malta companies that enter international transactions; therefore, the transfer of shares are also exempt.
- 04** Capital gains derived from the transfer of shares in Malta companies are exempt from tax as long as the assets of such a company do not wholly or principally consist of immovable property situated in Malta.
- 05** Losses may be carried forward indefinitely.
- 06** Advance revenue rulings available in relation to international tax issues.
- 07** Extensive double tax treaty network spanning over 60 Countries.
- 08** EU Parent-Subsidiary Directive, Interest & Royalties Directive & Mergers Directive are part of Maltese tax legislation.
- 09** No exchange controls.



In Short

Navigating the business climate of a new country can be a challenging and stressful process. However, with the key business and corporate benefits outlined above, it is easy to see why many entrepreneurs will choose to register business in Malta. Companies are incorporated in Malta for a reason.

Seek guidance from Promethean Advisory Limited before making decisions related to corporate needs. This can make a relatively painless process even simpler.

Whether you are looking to break into the European market, looking for favourable tax laws, or just looking for a logistically sound headquarters, Malta has a lot to offer.

Business aside, Malta is also a gorgeous country and a wonderful place to live.

PROMETHEAN CORPORATE SERVICES

Mobile: +356 22264220

E-mail: info@promethean.mt

Web: www.promethean.mt

Address: 16, Triq il-Markis Giuseppe Scicluna, Naxxar, Malta



Scan to access
Digital Visit Card

