



Corporate Taxation

Malta's Corporate Tax Systems

As an 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 practice. 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 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 authorised agent. WDM International may be engaged to carry out all the necessary formalities pertaining to the incorporation and annual maintenance of Malta registered companies. At WDM International we may also hold the shares of a company as a duly authorised trustee.

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 Registrar of Companies. 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 Office	All companies which are registered in Malta must have a Maltese registered office.
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 in order to set up a public company – or the equivalent in foreign currency. With regard 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.

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 share- holders 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 Registrar of Companies along with a payment of €100 to €1,400 which depends on the authorised share capital. Annual accounts should also be filed with the Registrar of Companies along with the auditor's and director's report.

Basis of Taxation

Any person that is considered to be ordinarily resident and domiciled in Malta is subject to Maltese tax on a worldwide basis, that is, on any income or gains whether arising in Malta or otherwise. Persons that are either resident or domiciled in Malta are subject to Maltese 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 Maltese 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 company is incorporated in Malta. A company is also considered to be a Maltese resident company by way of its management and control being exercised in Malta. A Maltese 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 Maltese registered company on those profits which it distributes as a dividend in favour of its shareholder(s) is credited in full against the Maltese 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 shareholder level.

Tax Accounting

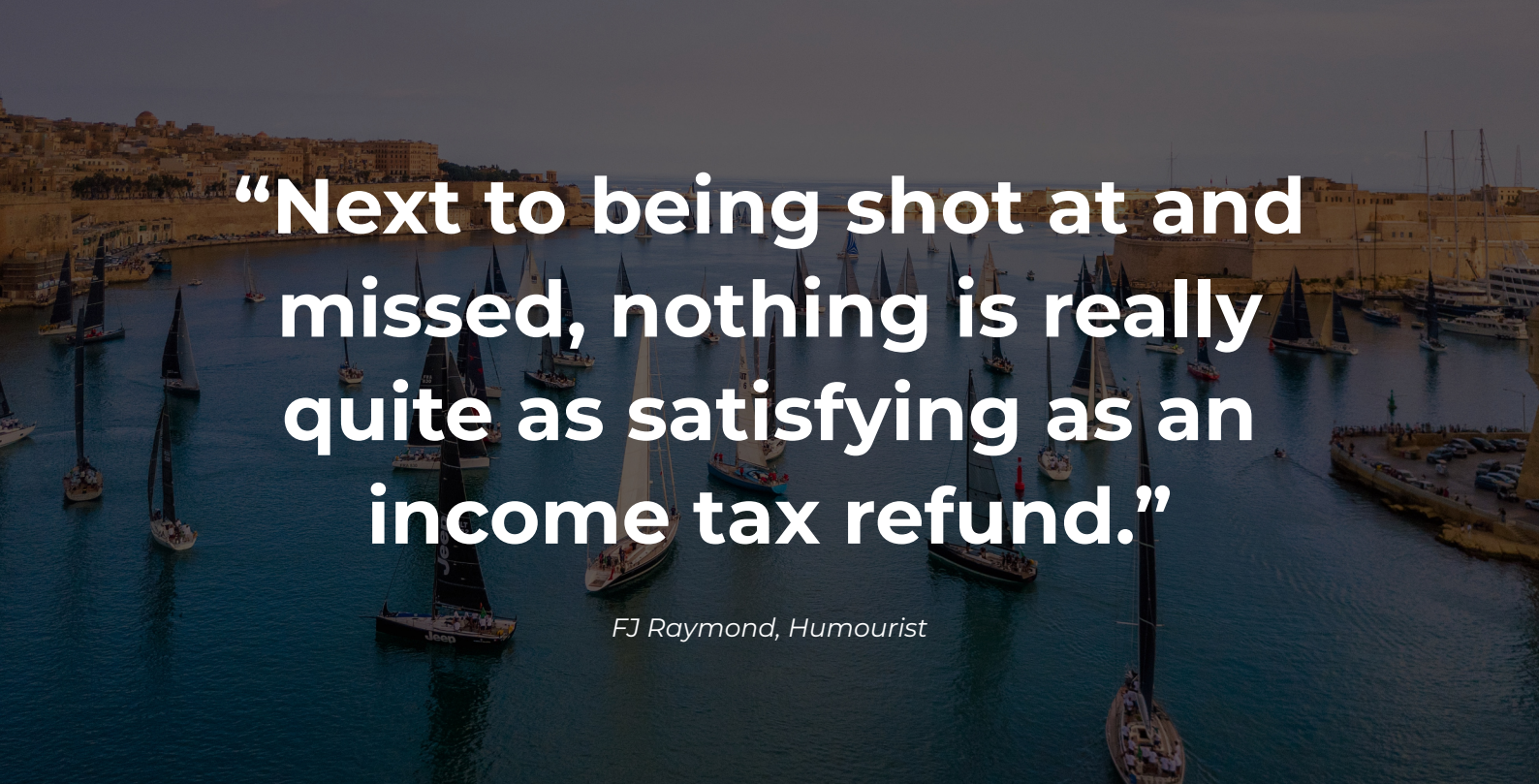
Maltese tax legislation provides for a system of tax accounting whereby a company is required to allocate its distributable profits to the following 5 separate taxed accounts depending on the source and nature of the said profits, which in turn, give rise to different refunds, claimable at shareholder level, upon a distribution of dividends from the company.

Final Taxed Account (FTA)	All companies which are registered in Malta must have a Maltese registered office.
Immovable Property Account (IPA)	Profits, gains or income subject to Maltese 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, MIA, IPA and FTA.

Tax Refunds

Tax refunds may be claimed by residents 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 and IPA. A claim for a refund of tax by a registered shareholder of a Maltese company is paid by the Maltese fiscal authorities within 14 days from the end of the month of a valid application being submitted, 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 Maltese company.



“Next to being shot at and missed, nothing is really quite as satisfying as an income tax refund.”

FJ Raymond, Humourist

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 that 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 that 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 06).

Practical Illustrations

Income Stream	FIA/MTA	PH	Passive Interest & Royalties	Any Other Income
Distribution out of:	FIA/MTA	FIA	FIA	FIA/MTA
COMPANY LEVEL				
Income	1000	1000	1000	1000
FRFTC @ 25%	250	-	-	-
Chargeable Income	1250	1000	1000	1000
Tax @ 35%	438	350	350	350
Less: Foreign Tax Relief	(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)	(300)
EFFECTIVE TAX BURDEN	63, i.e. 6.3%	0, i.e. 0%	100, i.e. 10%	50, i.e. 5%

The Maltese Holding

Company Regime A Maltese 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 Maltese holding company is also generally used to hold assets and participations in other companies located within the EU and in third countries.

Participating Holding

Maltese companies indeed constitute an ideal vehicle for holding activities, given the participation exemption available to such companies. In order for there to be a holding the company must hold directly at least 10% of the equity shares of a company whose capital is wholly or partly divided into shares, which holding confers an entitlement to at least 10% of any two of the following:

- ☑ Right to vote;
- ☑ Profits available for distribution; and
- ☑ Assets available for distribution on winding up.

Alternatively a participating holding may arise where a company is an equity shareholder which holds an investment representing a total value, as on the date or dates on which it was acquired, of a minimum of €1,164,000 (or the equivalent sum in a foreign currency) in a company and that holding in the company is held for an uninterrupted period of not less than 183 days. Other conditions may also give rise to a participating holding. For a participating holding to arise, the holding ought to consist of an equity holding which refers to a holding of the share capital in a company which is not a property company, when the shareholding entitles the shareholder to at least two of the following equity holding rights:

- ☑ A right to vote;
- ☑ A right to profits available for distribution; and
- ☑ A right to assets available for distribution on a winding up of that company.

Participation Exemption

Any income or gains derived from a participating holding acquired on or after 1 January 2007, is subject to a participation exemption provided that the participation is held in a body corporate which satisfies at least one of the following conditions:

- ☑ It is resident or incorporated in a country or territory which forms part of the European Union;
- ☑ It is subject to any foreign tax of at least 15%;
- ☑ It does not have more than 50% of its income derived from passive interest or royalties.

Where none of these conditions are satisfied, both of the following two conditions must be satisfied:

- ☑ The shares in the non-resident company must not be held as a portfolio investment and
- ☑ The body corporate not resident in Malta or its passive interest or royalties have been subject to any foreign tax at a rate which is not less than 5%.

Income or capital gains derived by a company registered in Malta from a participating holding or from the disposal of such a holding will be exempt from tax in Malta.

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 Maltese company are exempt from Maltese tax as from year of assessment 2013.

In the event that dividends are received from a participating holding in a body of persons which 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 Maltese company can either opt to avail itself of the exemption or pay tax at the rate of 35%, subsequent to which the shareholders of the Maltese company would be able to claim a 100% refund of tax paid at the level of the Maltese 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. Maltese 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 which 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 carry out 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 which 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 Maltese branch or place of business. Branches of overseas companies are taxed in the same manner as Maltese 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 Maltese branches of overseas companies.

A Maltese branch of an overseas company may likewise benefit from a participation exemption. Where the holding of shares by the Maltese 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.

Income Derived from Intellectual Property

Maltese tax legislation provides for an exemption on royalties derived from qualifying patents. Under the exemption, royalties and similar income (including any amounts paid for the grant of a licence to exercise rights) derived from registered patents, in respect of qualifying inventions, whether registered in Malta or elsewhere, are exempt from tax in Malta as from 1 January 2010. The exemption applies regardless of where the underlying research and development was carried out. A patent is considered to be a qualifying patent if it is registered in Malta or elsewhere, in relation to which the research, planning, processing, experimenting, testing, devising, designing, developing or similar activity leading to the relevant invention was carried out in Malta or elsewhere.

This incentive is available to all persons (individuals and enterprises) that own the rights to patented intellectual property and are receiving income in the form of royalties (or other similar income there from). A patent granted in Malta or overseas is considered as eligible as long as the same invention is considered patentable under Maltese law or is the result of Fundamental Research, Industrial Research or Experimental Development.

The regime was extended to also include income derived from copyright and other non-patented IP, as well as income derived from trademarks.

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 continued to Malta. Conversely, a company registered and incorporated in Malta, may seek to continue its existence to an approved country or jurisdiction outside Malta, subject to certain provisions.

With regard to the Maltese 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 Maltese Registrar of Companies 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 Maltese Registrar of Companies, characterised 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

There are no CFC rules or thin capitalisation restrictions **02**

03 No transfer pricing rules, but arm's length approach is recommended

Duty on documents is not paid by Maltese companies which enter international transactions, therefore the transfer of shares are also exempt **04**

05 Capital gains derived from the transfer of shares in Maltese 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

Losses may be carried forward indefinitely **06**

07 Advance revenue rulings available in relation to international tax issues

Extensive double tax treaty network spanning over 60 countries **08**

09 EU Parent-Subsidiary Directive, Interest & Royalties Directive & Mergers Directive are part of Maltese tax legislation

No exchange controls **10**



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