

Doing Business in Malta

*A guide to doing business
and investing in Malta*

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Foreword

The Guide has been prepared for the assistance of those interested in doing business in Malta. It does not cover exhaustively the subjects it treats but is intended to answer in a broad manner some of the key questions that may arise. Before taking specific decision or in dealing with specific problems it will often be necessary to refer to the relevant laws, regulations and decisions and to obtain appropriate advice.

The material contained in this guide was compiled on the basis of information available at 30 September 2012.

Chapter 1

Malta - A Profile

Geography and climate

Malta lies in the centre of the Mediterranean Sea, 93 kilometres south of Sicily and 290 kilometres north of the nearest point on the African coast.

The total area of the Maltese Islands is 316 square kilometres. Malta is the larger Island, occupying 95 square miles. Gozo lies to the north-west, less than half an hour away by ferry. The topography of the islands is low-lying to the south-east and hilly toward the north-west. At various points the 192-kilometre shoreline is deeply indented, providing excellent natural harbours. Although it has some sandy beaches, the coast of Malta is predominantly rocky, including some spectacular hills. Valletta, the capital and a UNESCO world heritage city, lies on a promontory between the two main natural harbours.

Malta has a mild climate. The hottest summer month is August, having an average maximum temperature of 31°C (87°F). The coldest winter month is February, with an average minimum temperature of 9°C (49°F). The average annual rainfall is 520 millimetres (21 inches). There are about 300 days of sunshine each year.

The population of the Maltese Islands as at the end of 2010 is just under 418,000, with a density of over 1,300 persons per square kilometre, the highest in the EU.

History

Malta was inhabited even in prehistoric times, as is evidenced by its numerous megalithic temples and other sites, which are among the oldest free-standing buildings in existence and, of these, among the finest. In recorded history the Phoenicians were the first foreigners to occupy the islands, and they were followed by the Carthaginians. Following the destruction of Carthage, Malta was absorbed into the Roman Empire. St. Paul the Apostle was shipwrecked on the islands in A.D. 60, and the country has been Christian ever since. In the later years of the Roman Empire, Malta formed part of the Byzantine bloc.

The Arab expansion reached Malta in A.D. 870. The country remained under Arab domination until 1090, when Count Roger of Normandy added Malta to his conquest of Sicily. Malta shared in the fortunes of Sicily until 1530, when, in an attempt to strengthen the southern frontiers of his domains against Islam, Charles V of Spain offered Malta to the Knights of St. John of Jerusalem, an international order of chivalry founded in the early years of the Crusades. For the next three centuries the destinies of Malta and the Knights of St. John were linked.

The Knights of St. John were driven out of Malta by Napoleon in 1798, and the French ruled for two years. Malta became a British Crown Colony in the early nineteenth century and remained so until September 21, 1964, when it became an independent sovereign state. In 1974 Malta was declared a republic. Malta is a member of the Commonwealth and of the United Nations. Soon after independence Malta was admitted to the Council of Europe.

In 1990 Malta applied for European Union membership. Accession negotiations were concluded in December 2002 and the accession treaty signed in April 2003. Malta became an EU Member State in May 2004.

Political system

Malta is a parliamentary democracy. The head of state is the President, who is appointed by the House of Representatives and whose role is mainly ceremonial. The House of Representatives is elected by universal suffrage for a five-year term. The Prime Minister is usually the leader of the party commanding the greatest measure of support in the House. Ministers are nominated to the Cabinet by the Prime Minister from among the elected members. Various local administrative matters are delegated by specific legislation to local councils.

Legal system

The legal structure is based on the civil-law pattern of continental Europe, but most administrative, financial and fiscal legislation is based on British laws. There are three principal jurisdictions—civil (including commercial), criminal and voluntary. There is one Court of Appeal for all jurisdictions. The Constitutional Court, however, is the ultimate competent court for judgements on the conformity of laws and administrative action with the Constitution. There are a number of administrative tribunals from whose decision an appeal can be made (usually on a point of law only) to the Court of Appeal.

Malta recognises the right of individual petition to the European Courts of Justice, and the European Convention on Human Rights forms part of Malta's domestic law.

Judges are appointed by the government. They cannot be removed before retirement age, except for proved inability to exercise their functions properly and following a two-thirds vote in the House of Representatives.

Language

The official languages in Malta are Maltese and English.

Maltese is a Semitic language in structure. Today, however, it contains many European words (mostly Italian and English). The language has its own distinct characteristics and its own literature. It is written in Latin script.

Practically all Maltese people are bilingual. Official publications, including laws, are issued in both English and Maltese. Legal documents may be drawn up in Maltese or in English. Most commercial and banking documents are drawn up in English, and most correspondence, official or otherwise, is in English.

Maltese and English are taught at primary school level. Subjects at secondary school level include at least another language, with Italian, French and German being the most widespread.

Religion

A large majority of Maltese residents are Roman Catholics. However, there are several other religious denominations, both Christian and non-Christian, many of whom have their own places of worship.

Education

School attendance is compulsory up to the age of 16. Education is provided by a number of government and private schools. A substantial majority of secondary school leavers continue with their education in the university and in a number of technical and vocational institutes. At present, over 10,000 students attend the University of Malta, including some 750 students from 80 different countries.

State schools are free while a number of schemes provide for financial assistance to University and other tertiary school students. A large number of university graduates follow specialisation courses abroad.

The Economy

General description

The Maltese economy has grown in recent years with GDP at constant prices growing at an average of over 4.3 percent per annum during the years 2007 – 2010 (based on estimates), except for 2009 when the economy contracted. The annual rate of inflation was 1.51% in 2010. Unemployment in February 2011 stood at 4.5%. Gainfully employed persons include a relatively high percentage in the public sector (27.6 percent as at March 2011). The government maintains an ongoing review of human-resources development in the public sector, aimed at improving systems and efficiency in public service. The Employment and Training Corporation (ETC) provides specialised training in various employment sectors in addition to its primary function as a recruitment agency. The Maltese economy is based on the free-enterprise system. While a major part of the economy is privately controlled, public utilities are mostly provided through government-controlled entities.

Manufacturing

The manufacturing sector accounts for 17% percent of GDP. Following the strong growth registered during 2007, total manufacturing turnover increased further in 2008. As expected, value added dipped in 2009, but recovered again in 2010. Average full-time employment in the manufacturing sector was 20,803 in 2010, a decline of 1.2 per cent over 2009. The local manufacturing industry continues to be characterised by a large number of small firms (those with less than 10 employees). The larger firms, however, account for over 90 percent of total manufacturing output. Apart from ship repair and aircraft maintenance, the contributing manufacturing industries produce light consumer goods and electronic and engineering components. Electronics and high-tech industries are the fastest growing sector.

Over 200 export-oriented foreign companies operate profitable manufacturing subsidiaries in Malta, benefiting from attractive incentives.

In May 2004, with Malta's accession to the European Union, goods produced in the EU, or goods that are already in free circulation in the EU, are exempt from the payment of customs duties, and only goods exported to non-EU countries are subject to the payment of export duties.

Tourism

The tourist industry is a major source of foreign-currency earnings. Overall, some 12 percent of employed persons are involved in tourism-related activities.

Since the early 1990's the number of tourist arrivals has exceeded one million per annum. Arrivals are predominantly from the United Kingdom, followed by Germany and Italy. Cruise liner passengers have increased by an average of 18.3% per annum over the past 10 years. Malta projects itself as both a holiday and a cultural resort. It is also becoming increasingly popular as a venue for conferences and English-language study. A number of leading hotel chains in the five-star category are represented in Malta.

Service industries

Malta has strengthened and modernised the legislative framework regulating financial services. Over the past years Parliament has revised existing legislation and enacted new laws on banking and financial institutions, insurance, companies, trusts, financial services, shipping and taxation. Complemented by an efficient regulatory regime, including laws against money laundering, and supported by highly qualified human resources, ideal geographical location and efficient infrastructure, these measures have contributed towards the development of a modern and successful financial services centre.

Malta is also a competitive yachting centre and a popular cruise-liner hub.

Transport and communications

Roads: Towns and villages, industrial and business centres, and holiday and leisure resorts are linked by an adequate road network. There are no highways, railroads or internal waterways.

Malta boasts some of the finest natural harbours in the world. Extensive conventional and roll-on/roll-off services by national and international shipping lines carry freight and cargo from Malta directly to Mediterranean, north European, Middle Eastern and Asian ports. All factories are located within 30 minutes of a harbour and the airport.

The Freeport: The Malta Freeport Corporation embraces three prime activities namely, container handling, industrial storage and oil products handling. The corporation is recognised as a high profile transshipment hub and presently enjoys third place amongst all Mediterranean transshipment ports. It handles over one million TEUs per annum and has network connections to over 95 ports world-wide.

Air transport: Air connections with major European destinations are efficient and frequent. Twelve legacy carriers operate scheduled air services to 37 destinations. The national airline, Air Malta, operates regular scheduled flights to the major European cities—a total of over 45 direct destinations with 200 flights a week. Low-cost carriers are gaining in popularity, accounting for over 25 per cent of all departures. The Malta International Airport, which handles some 2.5 million passengers annually, is a modern, spacious and efficient terminal.

Postal services: Postal services are efficient and reliable. Letters to Europe normally take two days to reach their destination. For faster service the major international courier service companies operate to and from Malta. The Malta Post Office operates an Expedited Mail Service (EMS Datapost) with guaranteed delivery times.

Mineral and energy resources

Malta has few natural resources other than its geographical position, climate and adaptable labour force. Most of its industrial inputs and consumer goods are imported.

Following seismic and geological analyses and studies, several onshore and offshore oil wells have been drilled but the quantities found were not deemed commercially viable so far.

Agriculture and fishery

Agriculture and fishery contribute only about 2% to national GDP, although the share is higher in Gozo. Agriculture is beset by inherent constraints such as land fragmentation and scarcity of rainwater for irrigation purposes. Schemes are in place to improve the income of farmers and fishermen and thus preserve these traditional, indigenous activities. The development of fish farming for export is of recent origin.

Telecommunications

The telecommunications system has been upgraded according to plans drawn up by the International Telecommunications Union. International connections have been significantly expanded through satellite technology and a high-capacity fibre-optic cable linking Malta with Europe. A mobile cellular telephone service including GSM and a pager system are in place. Internet usage by enterprises stood at 94 per cent in 2010, while 70 per cent of households had access to internet at home.

Foreign trade and balance of payments

In a small island economy like that of Malta, increased export and domestic economic activity are automatically reflected in the level of imports. International trade activity results in visible trade imbalances. However, as a result of surpluses arising from services, principally tourism, and from net investment income from overseas, Malta generally ends up with a surplus on current account. Similarly, net capital inflows have been invariably positive. Malta has a strong external reserves position, representing about eight months' imports.

Malta's main trading partners are the members of the EU, which account for more than 50 percent of exports and 69 percent of imports of goods and services.

Currency

Since 1 January 2008, the unit of currency is the euro (€).

Hints for the business visitor

Visitor's visas

Citizens from a number of countries do not require a visa to enter Malta provided that their stay does not exceed three months. These countries include all western European states, Australia, Canada, Japan, New Zealand, Singapore, and the United States. Citizens of other countries may apply for an entry visa at a Maltese embassy or consulate before proceeding to Malta. Where no embassy or consulate is available, a written request should be made to the Commissioner of Police. Since 2008 Malta's requirements on visas are in line with EU policy and Malta became part of the Schengen area in January 2008. For people from outside the EU, details of visa-exempt countries and visa application procedures are available on the website of the Ministry for Justice and Home Affairs at www.mjha.gov.mt

International time

Maltese time is the Central European Time (CET), which is one hour ahead of Greenwich Mean Time (GMT) and six hours ahead of U.S. Eastern Standard Time (EST). In line with the CET, Malta switches to Summer Time, which is one hour ahead of normal time, from the last week of March to the last week of October.

Business hours

With few exceptions, employees in private industry generally work a 5-day, 40-hour week. Normal working hours are as follows.

Industry: 7:00 a.m. to 4:30 p.m., with various arrangements for the midday breaks.

Commerce (retail): Shop opening hours are from 9:00 a.m. to 7:00 p.m. At the option of the shop licensee, hours may be extended to 10:00 p.m. on any day. Many shops close for a lunch break.

Government departments: Public hours vary, but staff works as follows: 7:45 a.m. to 5:15 p.m. with a 45 minutes' break.

From June 16 to September 30,
7:30 a.m. to 1:30 p.m. with no break.

Banks: HSBC Bank
Monday to Thursday 8:30 a.m. to 1:30 p.m.
Friday 8.30 a.m. to 4.30 p.m.
Saturday 8.30 a.m. to 12.30 p.m.

Bank of Valletta
Monday to Thursday 8.30 a.m. to 2 p.m.
Friday 8.30 a.m. to 3.30 p.m.
Saturday 8.30 a.m. to 12.30 p.m.

APS Bank
Monday to Thursday 8.15 a.m. to 1.30 p.m.
Friday 8.15 a.m. to 1.30 p.m.
Saturday 8.15 a.m. to 11.45 a.m.

Most banks make exchange bureaux for foreign-currency transactions available from 4:00 to 7:00p.m. Monday through Saturday. Automated exchange bureaux operate on a 24-hour basis.

Statutory holidays

The statutory holidays are as follows:

New Year's Day	January 1
Feast of St. Paul's Shipwreck	February 10
Feast of St. Joseph	March 19
Freedom Day	March 31
Good Friday	Variable
Workers' Day	May 1
Sette Giugno	June 7
Feast of St. Peter and St. Paul	June 29
Feast of the Assumption	August 15
Feast of Our Lady of Victories	September 8
Independence Day	September 21
Feast of the Immaculate Conception	December 8
Republic Day	December 13
Christmas Day	December 25

Weights and measures

Weights and measures are calculated under the metric system.

Dates and numbers

Dates are written in the sequence of day, month and year: 30 September 1997; 30/09/97 is a common abbreviation.

In writing numbers, commas denote thousands and points denote fractions, thus 100,000.79.

Chapter 2

Business and Investment
Environment

Industrial climate

Malta is an attractive destination for industrial investment. Its geographical location, modern infrastructure, adequate and flexible labour supply, and political stability are some of its key advantages.

The manufacturing industry is still strong and currently contributes approximately 17% of GDP. Government's economic policy focuses on assisting industrial players in tapping foreign markets and in restructuring their operations, while targeting new foreign direct investment in high quality, export orientated activities. Target sectors include electronics, pharmaceuticals, healthcare, plastics, rubber, aircraft maintenance and other similar relatively capital-intensive areas generating a higher value added per employee.

As a member of the EU, all products Malta exports to the EU have tariff free access. Malta also benefits from the trade agreements with an extensive network of non-member countries and trading blocs.

The importance of the services sector in the Maltese economy has grown significantly in recent years. One of government's key objectives remains to continue developing Malta into a centre for financial intermediation services with emphasis on insurance, administrative operations for investment services, software development, e-commerce, call centres, distance learning, international reservation systems and electronic exchanges. The financial services sector contributes about 7% of Malta's GDP and the Government is committed to double its contribution by 2015. (Note: software development, e-commerce, call centres are not statistically classified as financial services).

Tourism is another mainstay of the Maltese economy, contributing approximately 20% of GDP. Saturation point in the number of summer months' visitors may possibly already have been reached, and the emphasis is on the diversification and improvement of the tourist product. This trend is supported by the proliferation of new luxury hotels and conference facilities in recent years, the investment in the Grand Harbour cruise liner terminal project and the large scale residential and commercial developments at the Portomaso, Tigne Point, Manoel Island and Cottonera.

During recent years Malta has seen a steep growth in the on-line betting industry, serving foreign markets. Over 300 international remote gaming companies have set up shop in Malta representing about 10% of all online gaming websites. The ICT sector is also experiencing growth, with the Smart City Project promising to develop an IT village making Malta a centre for ICT excellence in the Mediterranean that should generate over 5,000 new jobs. The project's investors are estimated to be investing about USD300 million.

Framework of industry

The industrial sector consists of a mixture of large enterprises and numerous smaller family-run companies, as well as subsidiaries of mainly European companies that account for most of Malta's export earnings. ST Microelectronics accounts for about half of Malta's merchandise exports, te-sector employer.

The industrial sector benefits from a wide-ranging and competitive fiscal incentives package (see Chapter 3). In addition, Malta Industrial Parks provides modern factories in its ten public industrial estates at commercially attractive rents.

Public share ownership in industrial activities has grown in recent years. 2008 saw around 14 new listings, including three new equities and three new corporate bonds, as well as over 60 government securities. The Exchange now lists 40 companies, counting both equity and corporate debtlistings, on both the main List and the second tier Alternative Companies List. Some of those companies have more than one instrument listed, bringing the total number of listings up to 53, eighteen of which are equities.

Aims of government policy

Industrial Policy

The Ministry of Finance, the Economy and Investment issued the National Strategic Reference Framework in December 2006 for the years 2007 - 2013. The report refers to the need to sustain Malta's competitiveness and economic growth prospects. Also the need to further invest in the physical infrastructure of the country, especially in terms of energy, environment and transport and the need to promote further human resource development and raise employment levels. Malta's vision is to promote a competitive, high value adding economy and to achieve sustainable socio-economic development earmarked for a better quality of life.

The Government is committed to address Malta's needs and challenges which include:

- The promotion of indigenous investment and the attraction and consolidation of foreign direct investment, the diversification of the tourism industry market segments as well as the development of the knowledge intensive economic activity in existing and new economic sectors.
- Addressing existing deficiencies in Malta's physical infrastructure in particular those related to the environment, energy, transport and ICT.
- Ensuring quality education and training for all and providing a knowledge and skill development environment which targets the responsive identification of future labour market requirements.

Tourism Policy

The Malta Tourism Authority (MTA) was set up for the licensing, control and monitoring of accommodation and catering establishments, travel agencies, incoming tourism agencies, and destination management as well as organised excursion operators and tourist guides. The MTA is also responsible for marketing the Maltese Islands as a tourist destination and has embarked on a number of marketing campaigns outside Malta and has various representative offices in the major cities throughout Europe.

The marketing focus is discarding the longstanding tag line of Malta being a “sun and sea destination” and is branding Malta as a holiday destination all year round concentrating on attracting tourists for the islands’ culture and history. Malta is also increasing in popularity for Meetings, Incentives, Conferences and Events (MICE) facilities and enjoying increases in various niche markets such as religious, sports, English Language tuition and medical tourism.

Malta has recently recorded an arrival of over 1.3 million tourists annually, excluding the half a million day-trippers arriving on cruise liners. Accessibility to Malta and Gozo has improved with the introduction of low cost airlines and the services of a sea plane connecting Malta and Gozo.

Research and Development

Through the Malta Council for Science and Technology (MCST), Malta promotes investment in Innovation Relay Centres (IRCs) under the EU’s Sixth Framework Programme for Research and Technical Development. The MCST also encourages scientific research and development through its science popularisation programme, which encourages the pursuit of careers in the fields of pure science and its applications.

Privatisation

Government’s policy during recent years is to continue boosting the role of the private sector in economic development. It has substantially reduced state intervention and extended private initiative in most spheres of activity. Privatisation started in the banking sector with the partial disposal and the floatation of the two major banks, which together enjoyed 80% of the retail banking market. Past privatisations include the telecommunications operator, the airport, public lotto, the post office, and the petroleum division of Enemalta including an oil bunkering facility.

Public/private sector cooperation

The principal form of public/private sector co-operation is in the assistance given by specially constituted government bodies to promote industrial investment and the export of goods made in Malta.

Malta Enterprise (ME) was established in 2003 in order to promote optimal enterprise growth in manufacturing and related services, excluding retail, tourism and financial services. It amalgamates the activities of three former specially constituted government bodies namely the Malta Development Corporation (MDC) that was responsible for the promotion of industrial investment in Malta, the Malta External Trade Corporation (METCO) responsible for the promotion of exports and the Institute for the Promotion of Small Enterprise (IPSE).

Government carries on a dialogue on matters of vital economic importance with the trade unions and the various private-sector representative organisations through the Malta Council for Economic and Social Development (MCESD).

eGovernment

Initiatives have also been taken to carry forward the process of change in the public sector and to improve government services to the public. One of the Government's key initiatives in this respect was the implementation of Malta's e-government program aimed at promoting efficiency and utilising information and communication technology to the widest possible extent. The programme effectively places all government information and services on-line.

Chapter 3

Investment Incentives

Investment policy

Tax and other incentives to promote industrial activity in Malta have existed under various laws and schemes since the late 1950s. They were essential for creating a new basis for Malta's economic activity once it no longer served as a British and NATO naval base. The main attractions were tax holidays and low labour costs, complemented by a favourable double taxation treaty network. The type and the focus of the incentives have changed along the years to be in line with local and international developments.

The main industrial incentives are today contained in the Malta Enterprise Act, including various subsidiary legislation issued thereunder, which intend to encourage and promote investment in Malta. Other incentives are available under other legislation, including the Income Tax Act and Business Promotion Act. The incentives are targeted principally towards companies carrying on manufacturing and other industrial activities or services of an industrial nature but also apply to various other sectors. These sectors are listed in Appendix I and include, apart from a number of manufacturing activities, services related to computer software, electronic and electronic access systems, research and development, waste treatment, biotechnology, Freeport activities and film production.

The main industrial incentives are subject to the approval of the Malta Enterprise Corporation (MEC), which is an autonomous government agency. In appraising a project proposal the MEC takes into account various factors including its viability, the processes involved, the size of the capital investment, the sources of finance and the employment to be generated.

While some incentives currently have no date set for their termination, other incentives are definite and should only be available for applications reaching MEC by a specific date.

For the purposes of industrial incentives, Malta and Gozo are considered as one region but industry in Gozo is given added benefits to help neutralize the extra costs incurred because of freight and accommodation expenses. Factories are concentrated in a number of industrial estates.

Investment opportunities are also available in other sectors including shipping, aviation, and financial services. This chapter shall also discuss some of the main incentives currently provided to these other industries.

Tax incentives under the Malta Enterprise Act

Investment tax credits

The main tax incentives provided in terms of the Malta Enterprise Act, which are targeted primarily towards manufacturing industries but are also made available to certain other sectors upon pre-approval by the MEC, consist of investment tax credits (ITCRs). These are credits that can be deducted by the company from the tax due on chargeable income. Two types of ITCRs are available:

- ITCRs calculated as a percentage of a company's expenditure on qualifying tangible fixed assets or in the acquisition or development of intangible assets.
- ITCRs calculated as a percentage of wage costs for the first two years of employment of any person for whom a job is created in Malta as a result of an investment project.

The percentage at which the ITCRs are calculated varies depending on the size of the company and the amount of qualifying expenditure. When the credits for any year cannot be fully utilised, the excess may be carried forward to subsequent years. Amounts carried forward are increased by a prescribed percentage per annum.

For projects that provide a significant contribution to the development of the Maltese economy, the entitlement to ITCRs may be converted to other forms of aid such as cash grants. This possibility is however at the discretion of the MEC and only exists in exceptional circumstances.

Dividends distributed out of profits relieved from tax by ITCRs do not attract any further tax at any shareholding level up to and including the ultimate individual shareholders.

Research and Development Tax Credits

Enterprises investing in research and development activities leading to the development of new or significantly improved products, processes or services may also qualify for tax credits calculated on the basis of qualifying research and development expenditure, subject to conditions. Tax credits may also be available to certain companies upon registering intellectual property attained through their research and development projects.

Tax credits for enterprises carrying out a creative activity

Enterprises carrying out a creative activity that would contribute to the economic development of Malta can benefit from a tax credit calculated at a prescribed percentage of eligible costs incurred during a specific period, subject to a prescribed maximum..

Tax credits for the micro enterprises and self-employed

Very small enterprises qualifying as micro enterprises and which require assistance to expand, innovate or invest in their business in Malta may be granted a tax credit on various eligible costs, including wages, refurbishing of premises, machinery, etc. Various criteria and conditions are applicable, including the requirement for pre-approval by MEC.

Tax incentives under the Business Promotion Act

Reduced tax on approved projects

Profits set aside and utilised specifically for financing a project approved by the MEC may be taxed at a reduced rate of 15.75% (instead of the standard corporate tax rate of 35%). This benefit is available to companies carrying on any qualifying activity, saving certain exceptions. The qualifying profits must be kept in a non-distributable reserve for a minimum period of 8 years. A similar benefit applies to profits set aside and utilised specifically for upgrading or renovating a hotel, but the tax rate in this case is reduced to 17.5%.

Incentives for job creation

When an enterprise offers employment to individuals falling within the criteria specified in the applicable legislation it may be entitled to a deduction from its chargeable income of more than 100 percent of the relative wage cost. The jobs that qualify for this incentive are typically jobs for individuals who are otherwise unlikely to find suitable work opportunities.

Training cost allowance

When a qualifying company enters into a training programme approved by the MEC for its employees, it may be entitled to a deduction from its chargeable income of more than 100 percent of the expenditure incurred in organising the training, subject to certain limitations.

Tax incentives under the Income Tax Act

Reduced tax rate in terms of double taxation treaties

The net tax implications on foreign investment depend also on the general income tax provisions contained in the Income Tax Acts, which are discussed in other chapters. In general, it may be said that the Income Tax Acts and the provisions on double taxation relief offer foreign investors opportunities to structure their business in Malta in a tax efficient manner.

Reference may be made in this chapter to one particular provision that is closely linked to industrial activities. A number of tax treaties concluded by Malta allow a reduced rate of tax, usually 15%, to foreign shareholders of companies that are eligible for benefits, including non-tax benefits, under industrial incentive legislation. Distributions out of profits that had been taxed in the company's hands at a higher rate would entitle the shareholders to a tax refund. However, in terms of the Income Tax Act, profits that would qualify for the reduced rate on distribution in terms of tax treaties, are taxable at the reduced treaty rate in the hands of the company even before they are actually distributed. The proper application of this incentive depends on the terms of the relevant provisions of the applicable treaty.

Tax credits for electronic commerce

A system of tax credits is provided to encourage the development or hosting of an electronic business environment. It provides different tax credits on the value of capital expenditure related to the acquisition of information technology hardware and software and other capital expenditure that are incurred both by the developer that is responsible for the development and upgrading of the necessary systems, as well as the user for the introduction or improvement of electronic business facilities. Eligibility for this scheme is dependent on a number of conditions, including pre-approval by the MEC.

Expenditure on scientific research

Companies incurring expenditure on scientific research may be entitled to a deduction from their chargeable income of more than 100% of such expenditure, limited to a prescribed percentage of the company's annual turnover for that particular year. Where the deduction cannot be fully set off against the income of the qualifying company for the year during which the expenditure was incurred, the excess deduction is carried forward and set off against income generated in subsequent years.

Exemption on income derived from certain intellectual property

The Income Tax Act exempts from tax royalties, advances and similar income derived from patents in respect of certain qualifying inventions, subject to the satisfaction of certain criteria and conditions. Distributions of the exempt profits remain exempt from tax in Malta for each level of distribution up the shareholding chain. Further details on this exemption can be found in Chapter 11.

A similar tax exemption also applies on royalties, advances and similar income derived from copyrights.

Tax deductions on certain capital costs relating to the workplace

The Income Tax Act provides for the deductibility, for Maltese income tax purposes, of certain capital costs that would otherwise not be considered as deductible in terms of the general rule of deductibility of expenses. These include costs incurred in the construction of childcare facilities at the workplace, and costs incurred to increase workplace accessibility particularly in the context of disabled persons.

Non-tax incentives under the Malta Enterprise Act

Cash grants

Subsidiary legislation issued in terms of the Malta Enterprise Act provide a system of different cash grants for undertakings that carry on or intend to carry on an activity that the MEC deems may contribute to the economic development of Malta. These grants may be provided to part-finance expenditure in circumstances where the qualifying company or undertaking requires assistance, including:

- to undertake research and development activities;
- to participate in trade fairs, trade missions, and other events;
- to set up business development projects;
- to engage advisors in a particular field;
- to support or develop international competitiveness.

Cash grants may also be provided to certain small undertakings for the acquisition of tangible or intangible assets or the procurement of certain services. These incentives are mainly granted to SMEs operating in the manufacturing sector, but are also made available to other sectors upon pre-approval by the MEC.

Financial support for the hospitality sector

Companies whose activity consists of the operation or management of a guest house, hostel, hotel, farmhouse or restaurant, can benefit from an interest rate subsidy on loans taken out to finance eligible costs. The interest rate charged on the loan granted is between one and three percentage points lower than the rate of interest charged by financial institutions.

The assistance is granted in respect of a percentage of eligible costs depending on the size of the company, and is subject to other conditions and criteria.

Further incentives

The Malta Enterprise Act empowers the Minister responsible for MEC to lay down other promotional measures subject to conditions that may be deemed appropriate. This gives scope for the introduction of new incentives by way of legal notices (subsidiary legislation).

Non-tax incentives under the Business Promotion Act

Companies whose activities are treated as qualifying activities under the Business Promotion Act (BPA) may also qualify for the following non-tax incentives:

Child day care centres

Companies may benefit from subsidised rent on premises used to house child day care centres and assistance in financing the costs to set up and operate such centres.

Financial support: soft loans, interest rate subsidies, loan guarantees

Soft loans, typically amounting to 33% of an approved project but in any case not greater than 75% of certain investment costs, may be granted by the MEC to a manufacturing company to part-finance investment in qualifying expenditure. This benefit is subject to pre-approval by MEC. Depending on the circumstances, the rate of interest charged by the MEC may be 2.5 percent lower than the official Central Bank of Malta interest rate. Certain conditions as to the security required and repayment programme apply.

The MEC may also subsidise the interest rate payable by the company or provide guarantee on loans taken out from financial institutions to finance qualifying expenditure.

Training grants

Companies carrying on qualifying activities may also qualify for training grants. These range from 35 to 80 percent of the eligible costs incurred depending on the training programme.

Factories

The MEC will assist prospective investors in finding suitable factories in Malta's industrial estates and in structural works required to customise a factory to the investor's needs.

Other incentives

Assistance to exporters

The MEC also serves as the national focal point for trade promotion and export development. In this capacity, it has the role of acting as adviser to the government on international trade matters, negotiating and managing international trade agreements, carrying out trade research, product and market development, and assisting firms in export promotions.

Free-trade zones

The Freeport is a customs-free zone located around a developed harbour in the southern part of the island.

International financial centre operations

Maltese law provides for a favourable fiscal framework for the provision of financial services, and endeavours to establish Malta as an attractive, regulated international business centre. Details on the tax provisions applicable to Maltese companies carrying on international operations are provided in Chapter 13.

The regulator of financial services in Malta is the Malta Financial Services Authority (MFSA). The Authority provides a “one-stop shop” for all financial-services matters.

The Investment Services Act (ISA) regulates the carrying on of the entire range of investment business in Malta, particularly Collective Investment Schemes (CISs). The regulatory structure is comprehensive, covering dealing, management, administration, custody, and investment advice. A license from the MFSA is necessary in order to provide investment services and to operate a CIS in or from Malta or as an entity set up under Maltese law. Persons dealing in securities quoted on the Malta Stock Exchange are also subject to the rules and bylaws of the Exchange. An attractive tax regime exists for CISs licensed by the MFSA.

The Special Funds (Regulation) Act is intended to facilitate the establishment of retirement arrangements. It provides a regulatory framework for:

- The arrangement pursuant to which an employer promises the employee retirement benefits (Retirement Scheme);
- The types of funds (Retirement Funds) required to be used as investment vehicles by a Retirement Scheme and which require registration under the Law;
- The types of service providers that may provide services in connection with a registered Retirement Scheme and/or Retirement Fund (e.g. Asset Manager).

Under Maltese law, a Retirement Scheme is a contract between the Contributors (employer) and the Beneficiaries (members of the scheme eligible for benefits after retirement, permanent invalidity or death). Such scheme has to be registered in terms of law.

A Retirement Fund is a collective investment company with fixed or variable share capital incorporated under the Companies Act, 1995, set up for the principal purpose of holding and investing the Contributions made to one or more Retirement Schemes.

The Law also makes reference to Overseas Retirement Plans, which are bona fide schemes or arrangements organised under the laws of a country outside Malta, and which govern the rights and responsibilities of the parties related thereto, and under which payments are made to Beneficiaries for the principal purpose of providing retirement Benefits. An Overseas Retirement Plan does not require registration under the Law. However, it may either decide to establish a Retirement Fund registered under the Law or else invest its Contributions in an already established Retirement Fund registered under the Law.

The Companies Act provides for, amongst other matters, the setting up of investment companies with variable share capital (SICAVs) and companies with share capital denominated in a foreign currency. It allows the possibility of nominee shareholding in Maltese companies, provided that the nominee functions are exercised by an entity licensed by the MFSA.

Other laws relevant to financial and investment services include the Trusts and Trustees Act, Banking Act, the Insurance Business Act, the Professional Secrecy Act, the Insider Dealing Act and the Money Laundering Act.

Shipping

The Merchant Shipping Act, 1973 sought to consolidate Malta's maritime tradition by capitalizing on Malta's advantageous geographic position and natural resources. The Act introduced a tonnage tax regime which enabled the Maltese flag to flourish by granting shipping companies the opportunity to elect whether to remain in the standard corporation tax regime or whether to participate in the special tonnage tax regime.

On 1 May 2004, the date of Malta's accession to the European Union (EU), in the light of the Community guidelines on state aid to maritime transport, new regulations governing the fiscal treatment of shipping companies came into force.

The Maltese Tonnage Tax System

The Maltese tonnage tax model imposes on the ship owner the obligation to pay an amount of tax that is linked directly to the tonnage operated.

The Merchant Shipping (Taxation and Other Matters Relating to Shipping Organisations) Regulations, 2004 (the "Tonnage Tax Regulations") exempt from income tax in Malta:

- Income derived from shipping activities by a licensed shipping organisation; and
- Income derived by a ship manager from 'ship management activities'

Shipping organisations may renounce (irrevocably) to the benefits and privileges of the Maltese tonnage tax system and instead be subject to the standard corporate tax rate. The Maltese tonnage tax fees would still however be mandatory in that the registration fee and the annual tonnage tax are payable irrespective of whether or not the shipping organisation makes use of the benefits and concessions contained in the Maltese tonnage tax system. Furthermore, no obligation is imposed on Maltese ship owners to subject all 'tonnage tax vessels' in the same company or group of companies to the same tax regime.

Shipping activities

For the Maltese Tonnage Tax Regulations to apply to shipping organisations, the following preliminary conditions must be satisfied:

- The company must qualify as a 'Shipping Organisation' as defined in the Maltese Merchant Shipping Act;
- The company must be licensed as a shipping organisation;
- The ship must qualify as a 'tonnage tax ship'. A 'tonnage tax ship' is defined as either a ship declared to be a tonnage tax ship by the Minister, or a Community ship of not less than 1,000 net tonnage which is owned entirely, chartered, managed, administered or operated by a shipping organisation.

If all of the above conditions are satisfied, then the income derived by a licensed shipping organisation from shipping activities should be exempt from income tax in Malta provided that: (i) all registration fees and tonnage taxes have been duly paid and (ii) separate accounts have been kept clearly distinguishing the payments and receipts related to shipping activities from payments and receipts in respect of any other business.

The exemption from income tax is however limited to that income derived by a licensed shipping organisation from 'shipping activities'.

The term 'shipping activities' is defined in the Tonnage Tax Regulations as "the international carriage of goods or passengers by sea or the provision of other services to or by a ship as may be ancillary thereto or associated therewith including the ownership, chartering or any other operation of a ship engaged in all or any of the above activities or as otherwise may be prescribed".

Ship Management activities

Any income derived by a ship manager from ship management activities can also qualify for tax exemption under the Maltese tonnage tax system.

'Ship management activities' is defined as those activities carried out by a ship manager consisting in, but not limited to, the entire crewing of a tonnage tax ship and/or the provision of technical management thereto.

A 'Ship manager' must:

- be a licensed shipping organisation which is established in the EU / European Economic Area (EEA),
- have assumed responsibility for either or both of the technical or crew management of a ship,
- comply with international standards and fulfil requirements established under EU law,
- specifically include such activities among the objects contained in its Memorandum of Association, and
- adhere to other administrative conditions

The tax exemption applies subject to the following conditions:

- a ship manager must have settled all applicable registration fees and tonnage taxes,
- maintain separate accounts distinguishing receipts and payments relating to ship management activities from those relating to any other business,
- at least two-thirds of the tonnage of the ships to which the ship manager provides ship management activities is managed from the territory of the EU / EEA,
- the tonnage of the ships in respect of which the ship manager provides ship management activities meets one of a number of conditions (e.g. at least 60% of the managed tonnage is registered under a Community flag, ship manager does not decrease or provides a commitment to increase the tonnage of Community managed ships over a specific period)

Flag Requirements

Recent amendments have removed the Malta flag requirement. To ensure that Malta grants the maximum level of benefits and concessions envisaged in the Community guidelines, the tonnage tax system extends itself to ship management companies and licensed shipping organisations which own vessels registered outside Malta, subject to the satisfaction of certain parameters and conditions set out in the particular regulations and in line with EU law.

As described previously and in terms of the extension of the tonnage tax system, a ship of not less than 1000 net tonnage should qualify as a tonnage tax ship if:

- it is registered under the Maltese Merchant Shipping Act; or
- it is registered in another EU/ EEA State and has paid the applicable Maltese tonnage tax.
- the Minister declares a third country ship to be a tonnage tax ship provided certain conditions (similar to those found in the Community Guidelines) are satisfied (e.g. where the shipping organisation owns, charters or operates at least 60% of its total tonnage under an EU/ EEA flag, or where the % tonnage operated under an EU/EEA flag is not decreased or there is a commitment to increase the said percentage over a specific period of time).

Other benefits of the tonnage tax system

A licensed shipping organisation which has no income or no income other than income derived from shipping activities is entitled to submit a declaration in lieu of a tax return required in terms of the Income Tax Management Act.

Interest income derived by a licensed bank, credit or financial institution shall be exempt from income tax in Malta provided it relates to the financing of the operations of a licensed shipping organisation or the financing of a tonnage tax vessel.

Disposal of vessel

Any income, gains or profits derived upon the sale or disposal of a tonnage tax ship or from the disposal of any rights to acquire a ship which would eventually qualify as a tonnage tax ship, should not be subject to tax on capital gains and stamp duty in Malta. A balancing statement would however be required if capital allowances had been claimed in respect of the particular vessel.

Distribution of profits

Distribution of exempt shipping profits from a Maltese shipping company should not be subject to any further tax in Malta at any shareholding level up to and including the ultimate individual shareholders.

Transfer of shares in a Shipping Company

The transfer of any shares, securities or any other interest, including goodwill, held in any licensed shipping organisation that owns, charters, operates, administers or manages a tonnage tax ship is exempt from tax on capital gains and stamp duty in Malta under the Tonnage Tax Regulations.

Income tax regime benefits

In the event that the shipping company opts out of the Tonnage Tax Regulations, any income derived by the said shipping company should be subject to tax in Malta at the standard corporate rate of 35%, subject to the possibility of claiming double taxation relief.

Nevertheless, upon a distribution of the said shipping profits, the shipping company's shareholders should be entitled to claim a refund of six-sevenths of the Malta tax suffered by the shipping company on the taxed profits distributed to the shareholders. As a result, a tax efficient regime should possibly still be available in respect of the said shipping operations even if the exemption contemplated under the Tonnage Tax Regulations is not availed of.

Aviation

Malta's attraction as a location for aircraft activities is not so much based on tax considerations but mainly on the collective service-offering that Malta offers most of which has been in place for a number of years. However, ensuring tax neutrality and removing undue tax burdens is part of Malta's commitment towards providing the best possible deal and service to investors.

In terms of a recent amendment to the Income Tax Act, income derived from the ownership, operation or leasing of an aircraft used in international aviation business is deemed to arise outside Malta irrespective of whether the aircraft calls at or operates from Malta and the country of registration of the aircraft or engines.

This means that income derived by a company from the said aviation activities should not be subject to tax in Malta in terms of domestic law unless such company is incorporated in Malta or managed and controlled in Malta and receives the income in Malta.

Chapter 4

Foreign Direct Investment

Foreign Direct Investment

During 2010 Malta has managed to attract Euro792 million worth of foreign direct investment mainly from the financial services industry. The increase in foreign direct investment over 2009 amounted to Euro 251 million or 30%, the majority of which (69%), was investment by companies coming from outside the European Union.

This was possible due to different factors including, amongst others, natural and political such as;

- Relative ease of incorporation for non-regulated entities - Low registration and maintenance costs together with the possibility of having share capital, accounting and tax in a foreign currency. Also licensed trustees may be registered shareholders.
- High levels of productivity helping profitability of investment
- Tax efficiency – including tax being payable at the earlier of 18 months after year-end, or when a dividend is paid, exemptions in respect of certain capital gains and a participation exemption regime
- Double taxation treaties with a number of countries including most of the major European trading nations with a number of other treaties in the process of being negotiated
- Stamp duty exemptions
- No exchange controls
- Availability of industrial premises at competitive rates.
- Modern and efficient infrastructure - Malta rates highly amongst Mediterranean countries in the technology index. The world economic forum competitiveness index ranks Malta 13th out of 133 countries for financial market sophistication in its 2009/2010 report, with a banking sector that is 13th soundest in the world. Malta also has excellent air and sea links. The Malta International Airport offers direct flights to around 37 major centres in Europe, North Africa and the Middle East. The Malta Freeport, the country's trans shipment facility, strategically located on the main trade routes in the Mediterranean.
- Incentive packages to qualifying industries.
- Excellent educational facilities with post graduate degrees recognised worldwide.
- Qualified, flexible and multilingual workforce - English and Italian are widely spoken with a good understanding of French, German, Arabic and other languages. Translations widely readily available.
- High professionalism in business support services.
- IFRS's are the national recognized accounting reporting standards with all major international accounting firms represented on the island.

- Malta's legislative and regulatory systems - Formulated and implemented over the years based on Continental European and English law to create a solid yet flexible framework for business. Legislation is drafted in Maltese and English and proceedings in court may also be carried out in English.
- Economic, political and social stability - Malta has a stable economy, international credit rating agencies rate Malta highly and the World Markets Research Centre has rated Negligible Overall Risks.
- Healthy and safe environment thus helping achieve a high quality of life - Malta has a low crime rate and is a safe country to live in.
- The Euro is the islands national currency as from 2008
- Convenient European time zone
- Strategic location between Europe and North Africa - Economic and cultural ties with neighboring countries both to the north and south of the island sets Malta in a prominent position to achieve objectives.

In the past, since the islands independence, Malta managed to attract significant inward flows of foreign direct investment mainly due to financial incentives, the availability of a low-cost trainable English-speaking labour force and reasonable access to the EU market. The Business Promotion Act of 2001 was created with the aim of re-directing financial incentives from low value, export-oriented activities, towards high value added ones. In this Act ten target industries with a high level of value added were identified. Over time, due to the changing business environment, the need was felt to update the incentives being offered by the Business Promotion Act and in **2010 the Malta Enterprise Act was enacted.**

The incentives available under the Malta Enterprise Act may be subdivided in six:

1. Access to finance - Enterprises may be assisted through loan guarantees, soft loans, loan interest subsidies or royalty financing in the case of highly innovative projects.
2. Investment aid - Enterprises engaged in specific activities can benefit from tax credits on capital investment and job creation.
3. SME development - Grants targeting the creation and development of innovative start-ups and the development of forward-looking SMEs.
4. R&D and other innovation programmes - Various incentives are offered to stimulate innovative enterprises to engage in research and development.
5. Enterprise support - Assistance and support to businesses helping them develop their international competitiveness, improving their processes and networking with other businesses.
6. Employment and training - These incentives are administered by the Employment & Training Corporation (ETC). Enterprises are supported in recruiting new employees and in training their staff.

However, as described above, Malta offers more than financial incentives to foreign investors. It offers a complete environment that is conducive to business. An EU State on the doorsteps of Southern Europe and North Africa, Malta has developed into one of the most progressive and efficient business locations in Europe. In fact, Malta ranked 6th in inward FDI growth as classified in the World Investment Report 2007 attracting Foreign Direct Investment from countries like the UK, Germany, Italy, France, Spain and the United States. The present government has set a long term goal to make Malta a centre of excellence by 2015. This has been recognised internationally including in the World Economic Forum's (WEF) Global Information Technology Report 2006-2007 published in April 2008 which ranked the Government of Malta as the second most successful government in the world in promoting ICT.

Today in Malta there are more than 200 multinational companies which account for over 85% of Malta's industrial output. Examples of such industries are healthcare, pharmaceuticals and medical devices (Actavis, Baxter, Cardinal Health, Aventis, Siegfried Generics), high-precision engineering (Dedicated Micros, Playmobil, STMicroelectronics, Toly Products, Trelleborg Sealing Solutions, De La Rue Currency & Security Print), ICT and Electronics (Crimsonwing, Uniblue, GFI, Anvil, 2i and RS2, Oracle, Microsoft, HP, SAP, Dubai Internet City's Tecom), front and back office knowledge-based operations (Betfair, Expekt, Unibet, Interwetten, CBM Bookmakers, Betsson), logistic-based services (Lufthansa Technik, SR Technik, HSBC Bank Malta, Banif Bank, Mediterranean Bank)

Exchange Control

As from 1 May 2004 all exchange controls have been abolished from the Maltese islands. External transactions (i.e. capital and current transactions between resident and non-residents, whether in or outside Malta) are not subject to any restrictions.

For statistical purposes, however, certain external transactions involving residents still need to be reported to the Central bank of Malta. This is the case for licensed agents which deal in foreign exchange.

Excellent telecommunication and international banking services provided by mature local banks together with the lack of exchange controls make Malta an ideal country for the maintenance, transfer and conversion of funds.

Acquisition of property

The purchase of real estate in Malta by non-residents is regulated by the Immovable Property (Acquisition by Non-Residents) Act. This law, which is administered by the Ministry of Finance, restricts the direct ownership of property by non-resident companies and individuals. The restriction also applies to Maltese companies that have 25 percent of their share capital owned by non-residents or that are directly or indirectly controlled by non-residents. Property purchases by such companies are allowed only if the property:

- is required for the company's own use or as residence for company personnel
- is to be used for an approved industrial or tourism project or any other project that contributes to Malta's economic development
- is situated in an approved development zone

Non-residents require a special permit to acquire immovable property in Malta and such acquisition is subject to certain conditions. EU citizens who have resided in Malta for a period of at least five years preceding the date of the acquisition may purchase immovable property without requiring a permit. EU citizens who have not resided in Malta for at least five years may only purchase a primary residence or business premises and require a permit should they wish to acquire a secondary property.

However, there exists no restriction for both residents and non residents in respect of the acquisition of immovable property situated in special designated areas. Such areas are defined under the first schedule to the Immovable Property (Acquisition by non – residents) Act.

Furthermore, there is no restriction on the repatriation of the sale proceeds of the property, subject to the payment of any applicable tax.

Since 2001 a total of 3,477 permits were issued to non resident individuals whereas the total number of permits issued to non resident companies amounted to 146.

Bilateral investments treaties

Malta has concluded bilateral trade and investment agreements with several countries.

Malta subscribes to the Multilateral Investment Guarantee Agency, a specialised institution of the World Bank. In addition, Malta has concluded investment protection agreements with various countries. Naturally, being a member of the EU, Malta is part of the single market facilitating trade and investment between EU Member States.

References:

Websites

Malta Enterprise: <http://www.maltaenterprise.com/>

Times of Malta: <http://www.timesofmalta.com/articles/view/20110812/local/Financial-services-top-foreign-direct-investment-chart.379941>

<http://www.timesofmalta.com/articles/view/20110811/local/sharp-rise-in-foreign-direct-investment.379830>

Chapter 5

Regulatory Environment

Regulation of business

The Ministry of Finance, Economy and Investment is responsible for regulating economic policy, external trade and industry, while the Ministry for Fair Competition, Small Business and Consumers is responsible for competition and consumer affairs, trade services and intellectual property. Businesses may require licenses from various departments including the police, the public health authorities and the department of trade in relevant cases. Authorisation for conducting financial services is issued by the Malta Financial Services Authority.

Competition policy

Price controls

The price of most commodities is set according to market forces, although there are regulatory structures to protect the consumer and ensure fair pricing. The price of public utilities is set by the government.

Monopolies and antitrust

Because of the size of the country, leading firms often have a virtual monopoly in certain lines. The state itself maintains a monopoly in certain fields considered to require a national base in a small island like Malta, although post-EU membership and with a sustained process of privatisation taking place, such monopolies (and indeed even Government's direct participation in industry) are diminishing.

The national competition authority is the Office for Competition within the Malta Competition and Consumer Affairs Authority (MCCAA). The Office for Competition is responsible, among other things, for investigating, determining and suppressing restrictive practices and for carrying out sector enquiries.

The Competition Act prohibits agreements, decisions by associations of undertakings and concerted practices that prevent, restrict or distort competition in Malta. This prohibition, however, does not apply to any such agreements, decisions or concerted practices which contribute towards the objective of improving production or distribution of goods or services or promoting technical or economic progress; while allowing consumers a fair share of the resultant benefit; and do not impose on undertakings concerned any restriction which is not indispensable to the attainment of these objectives; nor give the undertakings concerned the possibility of eliminating or significantly reducing competition in respect of a substantial part of the products to which the agreement, decision or concerted practice refers.

Furthermore, the prohibition does not apply to agreements, decisions or concerted practices that do not have an appreciable impact on competition, taking into account all relevant circumstances, including the aggregate share of all the undertakings concerned of the relevant markets.

The Competition Act also prohibits the abuse by one or more undertakings of a dominant position. Failure to comply with the competition rules may result in criminal action, civil action for damages and/or an administrative fine.

Acquisitions and mergers

The Companies Act lays down the legal requirements and procedures for mergers. A merger must also satisfy the rules on fair competition under the Control of Concentrations Regulations and may require the prior approval of the Office for Competition.

The EU Directive 2005/56/EC of 26 October 2005 on cross-border mergers of limited liability companies has been transposed into Maltese law. This has created a legal framework within which cross-border mergers with other Member States may take place as long as the applicable conditions are satisfied.

Furthermore, Maltese law also implemented the EU Directive on a common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (90/434/EEC as amended by 2005/19/EC), which aims at eliminating tax obstacles with respect to mergers, divisions and other similar operations between companies of different Member States.

Securities market

Malta has a small stock exchange which is regulated by the Financial Markets Act.

Imports and exports

Imports are generally unrestricted. In particular, there are no difficulties concerning the importation of raw material and equipment required by industry. However, import licenses may be required for some products for the protection of domestic production and public-health reasons. In addition, imports from certain countries may be prohibited in accordance with restrictions set by the Security Council of the United Nations and/or by the European Union.

Exports are free of controls with some exceptions, primarily items of cultural value including antiques and works of art.

Consumer protection

The Consumer Affairs Act regulates various aspects of trading in the market place. Among other things, the law provides for the responsibilities of the Director General (Consumer Affairs), and establishes a Consumer Affairs Council and a Consumer Claims Tribunal. The Director General (Consumer Affairs) heads the Office for Consumer Affairs within the MCCA. The MCCA Act provides the Office for Consumer Affairs with a number of responsibilities, including the provision of advice and guidelines on consumer issues, investigation of complaints made by consumers about goods or services provided by traders, monitoring of trading practices and taking measures to suppress or prevent any practices that may be detrimental to consumers.

Another entity within the MCCA is the Standards and Metrology Institute, which adopts standards and co-ordinates standardisation and related activities to meet the needs of the Maltese community in accordance with European and internationally recognised standards and practices. It is also responsible for matters related to metrology.

Other departments may be responsible for better regulation of a specific sector, such as the Department of Health Information and Research, the Commerce Department and Agriculture Department, which are actively engaged in regulating the drug and food areas. Matters such as additives, ingredients, quality, hygiene, processing, labelling, and packaging are subject to stringent regulations.

Pollution control

Any installation that may cause air or water pollution or that carries the risk of environmental damage is subject to state control and regulation. If pollution norms are exceeded, sanctions may be imposed, including criminal action and the imposition of high penalties. The Environment and Development Planning Act gives the competent authority the power to grant or refuse to grant a development permit or licence. . The Authority may also impose certain conditions it deems appropriate when granting such permit or licence.

Special industries

Financial services

The Malta Financial Services Authority (MFSA) is the single regulator for financial services in Malta and is responsible for the licensing, regulation and supervision of all financial services activities including banking, investment services, collective investment schemes and insurance. The MFSA also manages the Registry of Companies. The MFSA is also responsible for consumer education and consumer protection in the financial services sector.

The principal legislation regulating financial activity in Malta include among others the Banking Act, the Financial Institutions Act, the Investment Services Act and the Insurance Business Act. Reference should also be made to subsidiary legislation, MFSA directives and MFSA rules which are issued in respect of specific financial services activities. (see Chapter 3).

Apart from setting up the legislative framework for the provision of financial services, the government has also ensured that Malta is not used for illicit activities. In this respect, the Prevention of Money Laundering Act prohibits the concealment, transfer, disguise, retention, and acquisition of property derived from criminal activity. Furthermore, the Prevention of Financial Markets Abuse Act safeguards the integrity of Maltese and Community financial markets and enhances investor confidence in those markets. .

Shipping

The Merchant Shipping Act regulates the registration of ships, including yachts in the Maltese registry and related matters. It entitles owners of ships carrying the Maltese flag to various advantages (see Chapter 3).

Patents, trademarks and copyrights

The normal safeguards and protection of trademarks, patents and copyright are available in Malta under the Trademarks Act, Patents and Designs Act and Copyright Act respectively. In terms of the former Act, trademarks are to be registered for a period of 10 years. Such registration may be renewed for further periods of 10 years, as long as the prescribed renewal fee is satisfied in accordance with the Act.. Trademarks can be registered for a variety of manufactured goods and of services. New inventions which involve an inventive step and are susceptible of industrial applications are patentable. Copyright protection is conferred automatically (i.e. without the necessity of application or registration) on artistic works, audiovisual works, databases, literary works and musical works. Amongst other works, computer software is eligible for copyright under the Copyright Act.

Malta has been a member of the Convention for the Protection of Industrial Property since 1899. Malta also adheres to the World Intellectual Property Organisation (Geneva) and to the Berne Convention for the Protection of Literary and Artistic Works.

Chapter 6

Banking, Investment and Insurance Services

Banking system

Malta has an old banking tradition and in its 2011-12 Global Competitiveness Report, the World Economic Forum reported that Malta's banking system is the 12th soundest in the world. Over the years the banking system has contributed to Malta's economic development, providing short- and long-term capital.

The Banking Act is modelled on European directives and regulates credit institutions.. The Financial Institutions Act regulates institutions that do not take deposits or other repayable funds from the public, i.e. Financial Institutions, as well as Payment Service Providers and Electronic Money Institutions. Although the core business of local banking remains predominantly of a retail nature, Maltese banks have increasingly introduced technology and have expanded their product range, particularly in the area of personal wealth management and expat banking.

Malta Financial Services Authority (MFSA)

In line with the Government's declared policy of adopting the single regulator concept, all banks operating in Malta fall under the supervision of the Malta Financial Services Authority (MFSA) which responsibility was transferred from the Central Bank of Malta in January 2002. The Central Bank has retained its important statutory role and responsibility to maintain price stability and a sound financial system in the country. To carry out its responsibility for supervising banks and promote efficiency and competitiveness, the MFSA has inherited the Banking Directives issued by the Central Bank of Malta in accordance with best international banking practices to regulate the licensing of banking institutions, the prudent management of their resources and their supervision in line with current EU Directives affecting banking. Following the transposition of the requirements of the EU Capital Requirements Directive 2006/49/EC and other legislation, the Banking Directives were converted into Banking Rules.

The local regulatory framework is in line with EU Directive 2010/76/EU (known as CRD III), Basel II and EU Directive 2010/78/EC (known as OMNIBUS Directive). The MFSA is on the forefront of Basel III and the Capital Requirements Directive, particularly the CRD IV developments and the challenges that this overhaul in regulation brings.

The MFSA requires banks and financial institutions under its supervision to submit regular periodic returns containing information on their business. These returns are still, however, filed with the Central Bank in view of its role in the monitoring of the economy, but information is shared by the two institutions.

The Central Bank carries out its usual basic functions. These include controlling the issue of bank notes, acting as a banker to the government and the banking system, and managing official foreign-exchange reserves. The Central Bank advises the government on monetary and economic policy. On 1 May 2004 the Central Bank of Malta joined the European system of Central Banks and on 1 January 2008 it became part of the Eurosystem.

Banking market

Deposit money banks

There are 25 licensed credit institutions in Malta and one bank which operates through the freedom of establishment.. Foremost among the licensed credit institutions are the retail or deposit money banks. Bank of Valletta plc and HSBC Bank Malta plc dominate the domestic banking market. During 2010, two companies were licensed to carry out banking activities as credit institutions, namely FCM Bank Limited and IIG Bank (Malta) Limited. Deutsche Bank (Malta) Limited, had its license upgraded from a financial institution licence to a credit institution licence. Other local retail banks include Lombard Bank and APS Bank. A number of foreign banks have also starting serving the local market, these include Volksbank, BAWAG, FIMBank, Banif and Mediterranean Bank. Furthermore, there are 249 banks which are licensed by regulators of other Member States of the EU which have exercised their right to offer their services in Malta.

Together, the deposit money banks operate a network of over 100 branches that offer the recognised services rendered by similar institutions throughout the world. Three types of deposit facilities are available (current, savings and term), denominated in Euro (€) and in the major foreign currencies. Interest rates on foreign-currency deposits are in line with international money market rates. No tax at source is applicable on interest earned by non-residents satisfying straightforward statutory conditions.

Backed by a worldwide correspondent network, the banks offer a broad range of foreign-exchange operations, including forward cover and expeditious payment services by SWIFT.

The banks provide the standard lending services by way of overdraft, term loans and trade finance. Banks are flexible in considering applications for finance. If shareholders' equity and other sources of project financing compare reasonably with bank finance, facilities can be approved rapidly and on comparatively easy terms. A wide range of trade financing is also available. The type of security sought by banks depends on the particular circumstances of the application and may include mortgage of the assets of the business; guarantees; and pledges of shares, insurance policies or merchandise.

To qualify for a licence, a credit institution must have a minimum capital of €5 million and must maintain adequate funds of its own to support operations and to satisfy the solvency ratio rules. Banks are prohibited from entering into transactions that may undermine the stability of the banking system. They are therefore restrained from concentrating their loans and commitments with the same or a connected customer, and their lending exposure is related to their capital base.

The Central Bank regulates the level of domestic credit through the control of bank liquidity. Deposit money banks are required to hold the equivalent of 30 percent of their total deposit liabilities in the form of liquid assets.

Both lending and deposit interest rates are determined by market forces.

Financial institutions

Financial institutions in Malta are subject to strict regulation and supervision, however the requirements are less onerous when compared to those applicable to credit institutions. The legislation covers organisations of different size and scope, ranging from a currency exchange outlet to institutions that almost operate like banks.

Their activities include factoring, money transmission services, issuing and administering means of payments, guarantees and commitments as well as foreign exchange. While many of these activities are also carried out by credit institutions, financial institutions are not allowed to take deposits or other repayable funds from public to fund their business.

Payment institutions

Payment institutions licenced in Malta provide global services to companies and merchants. They are regulated under the Financial Institutions Act. In 2010, the country implemented the European Payment Services Directive. As other financial institutions are not allowed to received deposits or other repayable funds from the public and must use funds exclusively to provide payment services. Malta's tax regime, in combination with passporting rights to other EU countries make Malta an attractive location for payment institutions.

e-Money Institutions

Malta was one of the first EU member states to allow standalone e-Money institutions. Recent amendments to the law, including the reduction of the initial share capital required have even further increased the attractiveness of this business model.

Having one of the most advanced telecom networks in the EU, Malta has pursued the set-up of e-Money institutions for a number of years now. E-Money institutions also fall under the scope of the Financial Institutions Act and in June 2011 the country transposed the EU electronic money institutions Directive regulating e-Money institutions into Maltese Law.

As a result the required initial capital has been lowered from €1 million to €350,000. This offers a unique opportunity to newcomers and smaller operations to access the market. In fact, the first e-Money institution was granted a licence in October 2011.

Investment services

Over the past two decades, Malta has set itself as a financial services hub. Malta's entry into the EU provided the momentum required to create a sound regulatory framework, which coupled with the excellent responsiveness of the MFSA, created an attractive location to base investment services providers and collective investment schemes.

The Investment Services Act, provides the statutory basis for the licensing and regulation of persons providing investment services as well as collective investment schemes. The MFSA provides detailed Rules and Regulations that complement the Investment Services Act and sets out the regulatory regime in line with the latest EU Directives and international regulatory practice. The MFSA comprises a dedicated authorisations unit and several specialised units that together provide a structure for the supervision of persons/entities engaged in the different financial services activities.

Malta is an attractive jurisdiction for investment services providers and CIS for a number of reasons, such as EU membership, EU compliant legal framework and passporting rights, efficient tax environment and the possibility of redomiciliation. Significant increases were registered in the number of professional investor funds and investment services companies throughout the past few years. As at the end of December 2011, the MFSA reported a total of 408 funds (including sub-funds) which are domiciled in Malta and have started delivering a net asset value as at end December 2011. As at the end of December 2011 local funds represented a net asset value of approximately €8 billion.

The registration of funds in Malta, has also attracted a large number of fund managers and other businesses providing support services to funds to set up shop on the Island. The number of investment services licences grew from 65 licences in 2006 to 102 licences in 2010, an increase of 57% or 37 net additional licences over the period between 2006 and 2010.

Insurance

The insurance industry is one of the pillars of Malta's development in the financial services sector, with the MFSA working to create a stable, yet innovative, jurisdiction aimed at encouraging the growth of insurance and reinsurance business, including captive insurance companies, Protected Cell companies (PCCs) and Incorporated Cell companies (ICCs), passporting their services throughout the EU. In fact, being part of the EU, Malta provides the possibility to insurance companies to offer their services in other EU Member States. Malta is currently the only full EU member state to have PCC and ICC legislation in place. The PCC and ICC structures build on the concept of segregation of assets and liabilities of core and cells, and should result in lower costs in respect of EU-based risks whilst at the same time providing for ring fencing of assets and liabilities.

The insurance industry in Malta boasts a mature domestic market constituted of life and non-life insurers, as well as a thriving international sector, including captives and direct underwriters and reinsurers. The number of insurance intermediaries and service providers also continues to increase.

As at the end of 2011, there were 35 principal insurance and reinsurance companies, providing both life and general insurance products. Only 8 of the the licensed principals (7 companies and 1 PCC core) are indigenous, with the remaining companies being internationally owned and mainly writing risks situated outside of Malta. There were also 8 PCCs established at the end of 2011, incorporating between them 17 cells.

Malta has also become a very attractive location for captive insurers and insurance managers. At the end of 2011, 10 companies held an affiliated insurance licence and fifteen held an insurance manager licence.

PwC Malta's publication "Insurance in Malta – An Industry profile" provides a further insight into the industry, a background of the legislation governing the industry and summarises the services that PwC is geared to provide to the industry.

Financial markets

Money market

The Central Bank of Malta conducts an active market in short-term money and investment instruments. Weekly repo auctions generate regular interbank trading, and dealing in Treasury bills has been simplified and made more accessible to the investing public.

Securities market

The administration of the Malta Stock Exchange, which is now a regulated investment exchange and accordingly is subject to the regulation of the MFSA, is entrusted to the Stock Exchange Council. However, listing requirements and continuing obligations lie with the Listing Committee which is part of the MFSA which in turn is also the Listing Authority (MLA). The Council's byelaws contain the rules and regulations governing the day-to-day running of the Exchange. They include the procedures to be followed during trading sessions and the operation of the Central Securities Depository.

Trading is carried out daily by licensed stockbrokers who act as agents for their clients using an electronic order-driven system linked to a Central Securities Depository. The Exchange is also responsible for clearing and settlement of trades matched during the trading session on a T + 3 basis. On settlement day the register of holders, which is maintained by the Exchange Central Securities Depository, is updated to reflect the transfer of ownership from seller to buyer. Security, confidentiality and investor protection are well-established standards.

Activity on the Malta Stock Exchange floor consists of trading in government securities, with the Central Bank of Malta playing a leading role as market maker-and also activity in corporate-sector securities, both equity and loan stock.

Fiscal exemptions by way of relief from duty on documents and capital gains tax are applicable for transfer of securities listed on the Exchange, subject to the satisfaction of certain conditions.

The Malta Stock Exchange is a member of The World Federation of Exchange, an affiliate member of The International Organization of Securities Commissions and a member of the Federation of European Stock Exchanges (FESE).

International financial market

International financial services

Banking, insurance and investment services companies of international standing have been prime targets in Malta's endeavours to develop an international financial services centre. A growing number of international banking institutions have been licensed under the financial services legislation. Such companies enjoy a favourable fiscal framework and are subject to supervision in Malta.

Sources of funds

Local financing

Short- and long-term borrowing is available from the banking system and from the other financial institutions. Businesses and companies have traditionally approached their banks for finance and are usually offered a tailored package drawn from a wide range of basic financing products. However, in recent years, companies are also increasingly turning to seeking financing through the issue of bonds to the public. For eligible companies, capital funding may also be raised through the Malta Stock Exchange.

Availability to foreign investors

There are no restrictions on foreign investors' access to financing in Malta. Borrowing from foreign sources is not restricted.

Chapter 7

Exporting to Malta

Import restrictions

Imports to Malta are not subject to any volume-based quotas or restrictions, except as may be established by the European Commission. Furthermore, there are no restrictions on trade with any country except for (1) restrictions sanctioned by the Security Council of the United Nations and (2) restrictions that may be imposed by the European Commission on imports to the European Union. Import licences are required in the case of certain items such as motor vehicles, pharmaceuticals, chemicals, detergents, textiles and steel. Goods that may not be sold in Malta, such as goods that are in breach of the law on trademarks or copyright, or that do not satisfy safety regulations, will not be released and must be re-exported.

Taxation on imports

Import Duties

There is no customs duty on the movement of goods between European Union member states. Goods imported from non-European Union countries may be subject to import duties in addition to VAT (when applicable).

The customs duty is calculated on the transaction value, including commissions, cost of transport and insurance to the place of importation, handling charges and similar costs of the goods, and is payable on the release of the said goods.

Goods which are not subject to duty are as follows:

- Goods placed under a customs procedure. Customs procedures include exports (whether before or immediately upon release), temporary importation, inward and outward processing, internal and external transit and the processing of goods under customs control.
- Goods imported into the Freeport are not subject to duty unless they are brought out of the zone into the European Union market or used or consumed in the zone. Within the zone, with appropriate authorisation, imported goods may be processed free of customs duty except that customs duty is payable when the products are intended for the European Union market. The Malta Freeport is specifically designed for trans-shipment purposes (see Chapter 3).

When goods are sold before they are released, the duty is assessed by reference to the value of the last sale. The rate depends on the classification of the goods under the Harmonised System Code.

Other taxes

The other taxes on imports are inter alia VAT, excise duty, and the motor vehicle registration tax (see Chapter 16).

Documentation and procedures

The basic customs document is the Single Administrative Document (“SAD”), which contains a full description of the goods and all relevant details. It is also advised that the SAD is accompanied by the notice of arrival and the commercial invoice. When an import licence is required it is advisable to have it in place before the importation and it must be presented to the customs authorities before the goods may be released.

There are no special regulations relating to bills of lading but an airway bill must be presented for goods transported by air.

For the importation of goods from European Union member states, an Intrastat supplementary declaration is usually required. In the case of imports originating from non-European Union countries, a certificate of origin is required. Furthermore, a GSP Form A or a Form EUR1 may be required whereby the import is made from a non-European Union country which has a special agreement with the European Union for preferential rates of duty.

Customs authorities will require business importers to produce a VAT registration number. Where the importer is not liable to registration for VAT in Malta, it is expected that the importer produces clearance from the VAT Department.

Goods that are placed under a customs procedure will be subject to certain conditions and controls. Goods in bond may be kept in a government warehouse or an authorised private warehouse.

Local representation

There is no requirement for a foreign exporter to Malta to have an official agent. An export order may be placed directly with a local purchasing firm, which will attend to the local necessary import formalities. A forwarding agent will, however, help to speed up customs clearance. The exporter may be represented in Malta by a commission agent or by a commission merchant.

A commission agent transacts business with third parties in the name and for the account of his principal. His function is to promote the business of the principal in Malta and to transmit orders for acceptance to the principal. Commission agents must be licensed by the Chamber of Commerce. A commission merchant transacts business in his own name but for or on behalf of his principal. A commission merchant is not bound to disclose the name of the principal for whom he acts and is directly liable to the person with whom he deals.

Sources of information

Malta has resident ambassadors and high commissioners in more than 20 major cities. The Malta Enterprise has resident representatives in a number of countries. Information on government policy on importation into Malta in general, as well as on particular items, is available from the Director of Trade, the Director General VAT, the Comptroller of Customs, the Malta Enterprise and the Ministry of Finance, the Economy and Investment. All government authorities may be contacted through the Maltese Government website www.gov.mt

Assistance may also be sought from the Malta Chamber of Commerce, the General Importers Association and the GRTU Association of General Retailers and Traders.

Chapter 8

Business Entities

Forms of business entities

A business organisation may be incorporated in Malta as:

- a limited liability company
- a partnership en nom collectif
- a partnership en commandite (which may have its capital divided into shares)

Other structures and set ups, as indicated further on in this chapter, can also be created in terms of Maltese law.

All these forms acquire a distinct legal personality as soon as they are incorporated and registered under the Companies Act (the “Act”). A foreign corporation that carries on business in Malta must register its branch or place of business in Malta under the Act and is referred to as an Oversea Company. The branch is not recognised as a separate entity and is not incorporated as such. The Act also recognises a joint venture (association en participation) but a joint venture is not required to be registered and is not vested with distinct legal personality.

A body of persons may also be incorporated as a Cooperative Society under the Co-operative Societies Act. Corporation is usually the term applied to government agencies and other public bodies constituted by an Act of Parliament. Cooperative societies and corporations set up by law have a distinct legal personality. Professional and other non-commercial partnerships are referred to as civil partnerships and are regulated by the Civil Code. The categorisation of business entities for income tax purposes is discussed in chapter 13.

The Companies Act replaced the Commercial Partnerships Ordinance in 1995. Shipping companies continued to be regulated by the Ordinance until 1st May 2004. Shipping Companies may elect to be regulated by the Companies Act – in default such shipping companies are regulated by the Merchant Shipping (Shipping Organisations – Private Companies) Regulations.

There are no provisions requiring Maltese companies to have any minimum subscription by Maltese shareholders or to appoint Maltese directors. Except for very exceptional circumstances, no exchange control restrictions apply on the acquisition of shares by non-residents. Certain information may be required for statistical purposes.

Limited liability company

A limited liability company (a company) is formed by means of capital divided into shares. The liability of the shareholders is limited to the amount, if any, unpaid on the shares held. This is the form of organisation favoured by large enterprises and usually preferred by the foreign investor. A company may be incorporated either as a public company or as a private company. A company is a private company if its statute limits the number of its shareholders to 50, provides for restrictions on the transfer of shares and prohibits any invitation to the public to subscribe for shares or debentures. The vast majority of companies in Malta are registered as private companies.

A private company may further qualify as an exempt company if:

- it restricts the number of debenture holders to 50 and
- prohibits the holding of any of its shares or debentures by another company that is not itself an exempt company and does not have a body corporate as director.
- neither the company nor any of the directors is party to an arrangement whereby the policy of the company is capable of being determined by persons other than by directors, members, or debenture holders of the company.

A private and exempt company enjoys certain privileges as to the details of its published financial statements and has the right to give loans to its directors. A company must have at least two shareholders but a private and exempt company may be formed as a single member company. A private, exempt company may also have its sole director act as company secretary.

Formation procedures

A company is constituted by virtue of a memorandum of association, which must, as a minimum, contain the following (whether the company is a public or a private company):

- Name of the company
- Its registered office in Malta
- Whether the company is a public or private company
- Objects of the company, which cannot be described as trade in general
- Description of the authorised and of the issued share capital – where the share capital is divided into different classes of shares, a description of the rights attaching to the shares has to be given
- Particulars of the shareholders and their respective subscription
- The number of directors and the particulars of the first directors
- Particulars of the company secretary
- The manner in which the legal and judicial representation of the company is vested and exercised
- Terms and manner of issue and redemption of preference shares
- Duration of the company.

The subscribers may also register, together with the memorandum, articles of association prescribing regulations for the company. The model regulations contained in the Companies Act apply to a company to the extent that they are not replaced by articles of association. The memorandum and articles of association are usually drawn up by accountants and/or lawyers.

The company may adopt any name that is not already in use as long as it is not found objectionable by the Registrar of Companies. The Registrar of Companies is likely to object if the name chosen is the same as that of another company, or is similar as to create confusion, or is offensive or otherwise undesirable. Furthermore, if the company concerned is a public company the name must be followed by the words “public limited company” or their abbreviation “p.l.c.”. On the other hand, the words “private limited liability” or “limited” or the abbreviation “ltd” must be indicated at the end of the name if the company concerned is a private company. The Registrar may be asked to reserve a name or names for a company in formation.

Before registration, it is necessary to deposit at least the amount of the initial paid-up capital in a bank account titled “Company Name—Company in Formation”. A copy of the bank deposit slip must be submitted to the Registrar of Companies together with the memorandum and articles of association. In certain specific circumstances and by way of an exception to the existing general rule of opening a bank account (whether locally or abroad) in the name of the new Maltese company, the said bank deposit slip may be replaced by a certificate issued by an authorised practitioner confirming that an amount equal to the initial share capital of the company was deposited in the practitioner’s clients’ account.

The memorandum and articles of association must be delivered to the Registrar of Companies, who will then register the company and issue a certificate of registration. This will usually take a few days from the date when complete documentation is filed. Upon registration of the memorandum and articles of association, the company comes into existence and is capable of commencing business. The fee for the registration of a company ranges from a minimum of €245 to a maximum of €2,250 depending on the amount of the authorised capital. Annual fees for the filing of the company’s annual return range from €100 and €1,400, depending on the company’s authorised share capital. The memorandum and articles of association may be amended by the delivery of the relative shareholders’ resolution to the Registrar together with the revised and updated text.

When shares or debentures are issued by a public company, the application forms for shares or debentures must be accompanied by a prospectus that sets out detailed information. Commission Regulation (EC) No 809/2004 as regards information contained in prospectus as well as the format, incorporation by reference and publication of such prospectus as well as dissemination of advertisements is directly applicable.

Every officer signing a document on behalf of a commercial partnership or overseas company must state the capacity in which he is signing. A commercial partnership is obliged to disclose the details below in its business letters, order forms as well as internet websites:

- Its name
- Kind of commercial partnership
- Its registered office
- Its registration number

When a commercial partnership is being wound up, this fact together with the name of the liquidator/s must be stated in every letter, invoice or other document issued by or on behalf of the commercial partnership.

Where, in case of a company, reference is made on the website or other documents to the capital of such company, the reference shall include a mention of both the issued and paid up capital. A partnership en nom collectif and a partnership en commandite must also include the names of the partners with unlimited liability in all business letters and order forms.

Capital structure

The authorised share capital of a private company cannot be less than €1,164.69, while that of a public company cannot be less than €46,587.47. When the share capital is the minimum authorised, it must be fully subscribed in the memorandum of association. When it is more than the legal minimum, at least the said prescribed minimum must be subscribed. Furthermore, in respect of private companies, at least 20 percent of the par value of each share taken up must be paid upon the signing of the memorandum. With respect to public companies, not less than 25 percent of the nominal value of each share taken up must be paid on the signing of the memorandum. There are no statutory limits to the amount of the authorised share capital of a company, and no special permits are required to go beyond any given limit.

Shares of no par value are not allowed, except in the case of investment companies with variable share capital (SICAVs), which are regulated by specific provisions in the law.

Shares may be issued at a premium, and the proceeds of the premium must be placed in “the share premium account”. A company’s memorandum and articles of association may permit the company to purchase its own shares, but this is subject to certain limitations and conditions.

Shares may be of different classes, having different voting, dividend and other rights. All shares must be registered. A private company is not permitted to issue bearer shares. Ordinary shares are shares that participate in the profits of the company and are not restricted to a fixed dividend. Preference shares may be participating or non-participating, cumulative or non-cumulative, voting or non-voting. The company may be authorised by its memorandum or articles of association to issue redeemable preference shares. Such redemption can be made only out of that part of the company’s profits that would otherwise be available for the payment of dividends or out of the proceeds of a fresh issue of shares made for the purpose of redemption. No redemption can be effected unless the shares have been fully paid up. If any premium is payable upon redemption, it must be provided out of the company’s profits or its share premium account.

A share transfer must be registered with the Registrar by the delivery of the statutory form. The form must first be delivered to the Commissioner of Inland Revenue who will certify that the stamp duty on the transfer has been paid or that the transfer is exempt from stamp duty. The stamp duty rate is 5% of the consideration (or market value if higher) for property companies and 2% in other cases. No stamp duty is payable on the issue of new shares. However, changes in the company’s issued share capital or a change in the voting rights may give rise to value shifting considerations.

A company can at any time increase or decrease its capital. When a reduction involves either a diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, it will only take effect three months after a notice is published in the Government Gazette and as long as no creditors file valid objections. The company may capitalise reserves and profits that are otherwise available for distribution by the issue of fully paid bonus

shares to its shareholders. The share premium account can only be reduced in the same manner as the paid-up share capital of the company. The share premium account can, however, be utilised by the company for the issue of shares to the shareholders as fully paid bonus shares, or to write off preliminary expenses or expenses connected with the issue of debentures or to provide for the premium payable on the redemption of any redeemable shares or debentures of the company.

“Debenture” is defined by company legislation to include debenture stock, bonds and other debt securities of the company. A debenture is normally issued as security for a loan, and it provides for the payment of interest at a specified rate until the repayment of the principal. Debentures are transferable, and they are usually redeemable on a specified date. They may carry the right of conversion into ordinary shares of the company at specified times and upon specified terms. Companies that have issued debentures must keep a register of debentures at their registered office, showing all details of the debentures and their holders.

Directors’ responsibilities

The business of a company is conducted by its directors. Public companies must have at least two directors but private companies can have a sole director. The directors need not, unless so required by the memorandum and articles of association, be holders of any shares in the company. The shareholders may remove a director by means of a simple majority vote. In general, a director may not carry on any business in competition with the company and may not receive loans from the company. Any director who has an interest in a contract with the company must declare that interest to the other directors. The law assigns a number of statutory, administrative, fiduciary, solvency, and managerial obligations on directors, and they are generally jointly and severally liable for damages for any breach of these duties. A breach of duty can result in a personal liability of the directors for administrative penalties and civil damages. Directors can be exposed to criminal prosecution in the case of fraudulent or unlawful trading or other offences linked to fraudulent insolvency.

Every company must appoint a secretary, who may also be a director. However, a sole director may not also be the secretary, unless the company is a private exempt company. The secretary is an officer of the company.

In order to promote best practice in transparency, accountability and fairness in the governance of companies the Malta Stock Exchange approved the ‘Code of Principles of Good Corporate Governance’ in 2001. The Code applies specifically to all companies the securities of which are listed on the Official List and/or the Alternative Companies List of the Malta Stock Exchange with the exception of Collective Investment Schemes. Compliance with the Code is not of a mandatory nature, but public companies are required to disclose the extent to which they comply with the Code by attaching a statement of compliance to their annual report. Auditors are also required to include a report on the ‘Statement of Compliance’ drawn up by the company directors, in the Company’s Annual Report.

Shareholders' meetings and voting rights

The company is required to hold its first general meeting not later than 18 months after its registration. Thereafter, the company must hold a general meeting each year and not later than 15 months from the date of the previous annual general meeting. Extraordinary general meetings can be convened at any time by the directors and as often as they think necessary. A person or persons holding not less than one-tenth of the paid-up share capital of the company have the right to request the company to hold an extraordinary general meeting. Fourteen days' notice of a general meeting must be given, but if all the shareholders entitled to attend and vote at a meeting so agree, a meeting can be convened at a shorter notice.

The business of an annual general meeting normally includes a consideration of the directors' and the auditors' reports, the approval of the accounts, the confirmation of the dividends proposed to be distributed by the directors, the election of the directors and the auditors, and the fixing of the directors' and auditors' remuneration. The Companies Act lists various matters that can only be approved by an extraordinary resolution, such as changes to the Memorandum and Articles of Association. The company's articles may specify further special matters that are subject to this restriction. A motion of an extraordinary resolution must be notified in advance to the shareholders and the law specifies the minimum majority required for its approval. A resolution in writing, signed by all the shareholders for the time being entitled to receive notice of and attend general meetings, is as valid and effective as if the same had been passed at a general meeting duly convened and held.

Dividends

Dividends may be declared by the shareholders' general meeting. Typically however, no dividend can exceed the amount recommended by the directors. Interim dividends may from time to time be paid by the directors in such amounts as appear to them to be justified by the profits of the company. Dividends can be paid only out of distributable profits as defined by the Maltese company law.

Liquidation

Liquidation procedures start with a resolution of the company or an order of the court to dissolve the company. Liquidation may take the form of a voluntary winding up, which may be a "members' voluntary winding up" or a "creditors' voluntary winding up". A members' winding up is only possible in the case of a solvent company. A company may also be wound up by the court. The Companies Act lays down detailed procedures for the different forms of winding up of companies, including rules on the obligations of liquidators and official receivers, on fraudulent and wrongful trading, on the liability of directors and shareholders, and on special powers of the court.

The Companies Act also contains provisions on company reconstructions and company recovery procedures.

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The Companies Act also contains provisions on company reconstructions and company recovery procedures.

Books, records and statutory audit

Matters concerning books, records and audit requirements are discussed in Chapter 10.

Partnership en nom collectif

A partnership en nom collectif (general partnership) has its obligations guaranteed by the unlimited and joint and several obligations of all the partners. At least one of the partners shall be either an individual or a body corporate having its obligations guaranteed by the unlimited, joint and several liability of one or more of its members. No action lies against the individual partners unless the property of the partnership has been first discussed. A partnership en nom collectif is formed by a deed of partnership, which must be delivered to the Registrar for registration. Changes in the deed of partnership, including the introduction of new partners or the withdrawal of any existing partners must also be reported to the Registrar. The rights of third parties are protected by law in case of withdrawals from or additions to the partnership.

Partnership en commandite

A partnership en commandite or limited partnership operates under a partnership-name and has its obligations guaranteed by the unlimited and joint and several liability of one or more general partners and by the liability limited to the amount, if any, unpaid on the contribution of one or more limited partners. At least one of the general partners shall be either an individual or a body corporate having its obligations guaranteed by the unlimited, joint and several liability of one or more of its members. Its capital may be divided into shares.

Other structures and set ups

Trusts

The Trusts and Trustees Act opened the trust concept to residents and to assets situated in Malta.

A trust is deemed to exist whenever a person (i.e. the trustee) holds as owner or has vested in him property under an obligation to deal with that property for the benefit of other persons called the beneficiaries (whether or not yet ascertained or in existence), or for a charitable purpose which is not for the benefit only of the trustee, or for both such aforesaid benefits.

The law does not require trust deeds to be registered with any authority. However as a general rule persons resident or operating in Malta and receiving property on trust require authorization. The Civil Code and the Trusts and Trustees Act lay down a number of fiduciary duties which trustees owe to beneficiaries.

Foundations & Associations

The Civil Code (Amendment) (No.2) Act, Act XIII of 2007, provides for the setting up of foundations and associations.

A foundation is defined as an organisation consisting of a universality of things constituted in writing whereby assets are entrusted to the administration of a designated person/s either for the fulfilment of a specified purpose or for the benefit of a named person/s. A foundation is endowed with legal personality and the assets of a foundation are kept distinct from the assets of its founder, administrators or beneficiaries.

A foundation may only be constituted by virtue of a public deed or by a will.

A foundation may not be established to trade or carry on commercial activities even if the proceeds of such efforts are destined for social purposes. Important exceptions are:

- A foundation endowed with commercial property or shareholding in a profit making enterprise, a franchise, a trademark or other asset which gives rise to income, as well as a ship as long as the organisation is only the passive owner of the asset;
- A foundation used as a collective investment vehicle (including pension or employee benefit arrangements), and which issues units to investors, for the passive holding of a common pool of assets, the management of which is delegated to a third party;
- A foundation used as a securitisation vehicle.

For the purpose of registering a foundation:

- i) In the case of a purpose foundation, an authentic copy of the constitutive instrument is to be delivered to and filed with the Registrar of Legal Persons.
- ii) In the case of a private foundation the constitutive deed and a note of reference referring solely to the founder shall be filed with the Registrar.

A foundation may be converted into a trust and vice-versa provided the written consents required by the law are duly obtained. When a trust is converted into a foundation, the administrators of the foundation shall be bound to execute a public deed and register the foundation within thirty days of the receipt of all consents required by the law and this by filing with the Registrar the documents required by the Second Schedule of the Civil Code.

On the other hand, an association is defined as an agreement between three or more persons to establish an organisation with defined aims or purposes to be achieved through the dedication of efforts and resources by such person and other persons who may join voluntarily. Associations are not bound by law to register as legal persons, though they may elect to do so.

The provisions relating to Foundation and Associations came into force on the 1st April 2008.

Joint venture

The Companies Act recognises a form of joint venture under the rules on association en participation. The association comes into existence under an agreement whereby a person (the associating party) assigns to another person, for a valuable consideration, a portion of the profits and losses of a business or of one or more commercial transactions. In relation to third parties, the joint venture is deemed to belong to the associating party. No registration is required for this type of association and the association is not vested with a legal personality distinct from that of its members.

Branch of a foreign corporation

A company incorporated outside Malta that establishes a place of business in Malta must register with the Registrar as an overseas company by delivering the following:

- An authentic copy (translated into English or Maltese if the original is not in either of these languages) of the instrument of constitution;
- Details of the directors and the secretary, if any;
- A return containing the following particulars: the name under which the branch or place of business is carrying out its activities in Malta if different from the name of the overseas company; the address of the branch or place of business; the activities carried out through the branch; the names and addresses of one or more individuals resident in Malta authorised to represent the overseas company; the extent of the latter individual's authority; the legal form of the overseas company; the identity of the register in which the overseas company is registered and the number with which it is registered.

Any changes after initial registration must likewise be registered within one month from such alteration.

The overseas company must state, in every prospectus inviting subscription of its shares or debentures in Malta, the country in which it is constituted or incorporated. Moreover, detailed provisions are made to regulate the issue and circulation in Malta of prospectuses that offer for subscription debentures or shares of a company registered or incorporated, or to be registered or incorporated, outside Malta in a non-EU member State or in a non-EEA state.

An overseas company is required to comply, as much as possible, with the rules on financial statements similar to those applicable to Maltese companies. Where the accounting requirements under the law of the foreign company varies from those of Maltese companies, the Registrar may accept the company's accounts as long as full details are given as regards the operations in Malta.

Continuation of companies

The Continuation of Companies Regulations allows a foreign body corporate of a nature similar to a company as known under Maltese laws to be continued in Malta without being wound up, i.e. move its corporate seat to Malta without being dissolved in the country or jurisdiction from which it is exiting. With effect from the date of the issue of a provisional certificate of registration (to be replaced subsequently by a final one), the company is subject to all rights and obligations under Maltese law.

Continuation does not operate to create a new legal entity or affect the property of the company. The continued company retains all its rights, assets and liabilities. The request for continuation will be accepted if continuation is permissible under the law of the company's jurisdiction and the company's constitutive documents and the foreign country is an approved jurisdiction.

The foreign registry of a continuing company is deleted and the company is treated as if it had been incorporated in Malta. Similarly, a company registered under the Companies Act may request the deletion of its Maltese registry to be continued as a company incorporated in another country as long as the law of that country allows the procedure.

Malta does not charge any tax on the mere exit of a company to be continued in a foreign jurisdiction nor does it charge tax on the mere continuation of a foreign company in Malta.

Sole proprietorship

There are no particular requirements relating to the registration or organisation of a sole proprietor. The provisions of the Commercial Code as regards commercial records and bankruptcy apply to sole traders.

Chapter 9

Labour Relations and Social Security

Labour relations

Availability of labour

Malta's labour force is about 164,347, the majority of which are male. Malta's long-standing educational system includes free education up to tertiary level and provides for a number of vocational and training schemes, ensuring the availability of graduates and a skilled labour force. The Maltese work force is accustomed to working for foreign employers and has a marked ability to learn and adapt itself to new techniques. Because of the size of the country, mobility of labour presents no difficulties.

Employer/employee relations

The main law regulating employer/employee relations is the Employment and Industrial Relations Act. This Act deals with, several matters, including conditions of employment, termination of contracts of service and the organisation of workers and employers. A basic feature of this law is that it prohibits discrimination, whether on sexual, social or other considerations, in connection with recruitment, pay, or dismissal.

Furthermore, the Occupational Health and Safety Authority Act places obligations on employers to grant protection against risks and accidents at work and its provisions are deemed to form part of the conditions of service of all employees. Other laws may apply to certain categories of workers, such as port workers and seamen.

Moreover, training schemes and apprenticeships are regulated by the Employment and Training Services Act.

Unions

Workers are not required to join a trade union, and the closed shop is not practiced in Malta.

Unions enjoy a wide degree of legal immunity for industrial action carried out in contemplation or furtherance of a trade dispute

When the majority of a company's workers join a union, the company is considered to be unionised, and the union should be recognised by management as a bargaining partner and as representative of the workers. Inter-union rivalry is not an important factor in pay bargaining or otherwise, and few disputes arise over demarcation. Collective bargaining is common and agreements reached between employers and unions are binding at law. Collective agreements are normally drawn up for a period of three years. Employment in professional and managerial grades is usually regulated by individual contracts of service.

Trade disputes can be referred to the Arbitration Tribunal.

Employers' organisations

Employers are organised into employers' associations, one of the main ones being the Association of General Retailers and Traders Union (GRTU) and the Employers' Association.

Employee training programmes

Considerable emphasis is placed on human resource development. The Employment and Training Corporation, a government agency, provides coherent training and retraining of labour to meet the requirements of industry. This agency provides other services, including the registration and placement of employees, the maintenance of job vacancies records and the administration of the government's training grants schemes.

Workers' representatives

Maltese law does provide for the setting up of employee representatives in certain circumstances. Consultation with workers' representatives is mandatory in the case of collective redundancies and transfers of business in establishments that employ more than 20 employees. The notion of labour participation in management has not gained ground, but the statute of certain public corporations requires the election of a worker-director.

Profit sharing

There is no specific legislative provision regarding profit sharing.

Wages and salaries

The national minimum wage per week in respect of a person who is 18 years old and over is € 158.11 (as from 1 January 2012). Additionally, every employer must pay statutory bonuses totalling around €512 per annum. Employers must grant annual wage increases equivalent, as a minimum, to the cost of living adjustment determined by the government for the respective year. There is no specific published official information on salaries in the private sector.

Fringe benefits

The most common fringe benefits are free or subsidised meals, transport and health insurance. Employees in managerial grades may also typically be entitled to subsidies on telephone bills and a company car.

Private pensions are not common. The main reason is that employees qualify for a retirement pension under the Social Security Act in terms of their social security contributions. It is worth noting that a reform of the Maltese pensions system has been undertaken in recent years (see below) and such reform is still ongoing.

As a rule, all fringe benefits and other perks are subject to income tax on their value. The Fringe Benefits Rules contain detailed provisions for determining the value of the taxable amount and also provide for certain exemptions.

Hours worked

The normal workweek is, generally, 40 hours. In certain sectors of employment, as a rule, overtime is paid at time-and-a-half on weekdays and Saturdays and at double time for Sundays and public holidays.

Paid holidays and vacations

In general terms, the minimum statutory period of vacation leave is 24 days.

As from 2012 the period of paid maternity leave has increased to sixteen weeks and should be increasing further to 18 weeks in 2013. The law also provides for a three-month unpaid parental leave on the occasion of the birth, adoption or legal custody of a child. A shorter or longer period may be agreed upon in the collective agreement or contract of service. Collective agreements and contracts of service usually provide also for paid marriage, birth and bereavement leave. There are 14 public holidays in Malta.

Period of probation

The first 6 months of every contract of service is deemed to be a probationary period unless a shorter period is agreed. In the case of contracts of service of employees holding technical, executive, administrative or managerial grades and whose wages are at least double the minimum wage, the period of probation is 12 months unless otherwise agreed.

Part-time employment

As a rule, employers are bound to ensure that part-time employees are not less favourably treated than comparable full time employees except where a different treatment is justified by objective criteria. Full-time employees working reduced hours are to be paid pro rata the wage applicable to a full time employee in similar employment, including amongst others pro rata entitlement to public holidays, vacation leave, statutory bonus, maternity leave, and parental leave.

Equal opportunities

Public offices promote the introduction of disabled persons and persons with special needs in their organisation structure. In addition, financial incentives are offered to the private sector to encourage employment of disadvantaged persons.

Termination of employment

Employment under a contract of service for an indefinite period may be terminated by the employer either during the period of probation, in which case the employer is not required to state any reason for the termination, or on grounds of redundancy or for a good and sufficient cause.

If the employment is terminated during the period of probation and if the employee has been in employment for more than one month, the employer must give a week's termination notice. An employer terminating a contract on grounds of redundancy must give a notice of termination of a period ranging from 1 to 12 weeks, depending on the time for which the employee had been employed with that employer unless a longer period was agreed with an employee holding a managerial position. If the employer fails to give the statutory notice he will be liable to pay the employee the full wages for the notice period.

A dismissal on grounds of redundancy may only be made on a last in first out basis, and the employee will have the right to re-employment at the same terms and conditions if a vacancy in the same post arises within one year from the termination. Certain procedures, including consultation with employees' representatives, must be followed in the case of collective redundancies.

The law specifies certain situations that may not be regarded as a "good and sufficient cause" for the termination of the employment, such as membership in a trade union or pregnancy of the employee. When an employer transfers his business, his employees continue in their employment and become employees of the new owner under the same terms and conditions. The transfer of the business may not be regarded as a good and sufficient cause unless the employer proves that the termination is necessary for economic, technical or organisational reasons entailing a change in the workforce. If the employee considers that employment has been terminated for unfair reasons, he/ she can appeal to the Industrial Tribunal, which may either order reinstatement or award an amount of compensation. Reinstatement or reengagement of the complainant is not allowed for persons holding positions of managerial or executive posts which posts require a special trust within the company or in ones ability to perform such duties.

An employee may at any time terminate a contract for an indefinite period without assigning any reason. If he has been employed for more than one month he is required to give a notice of termination of a period generally ranging from 1 to 12 weeks, depending on the time for which he has been employed.

If any of the parties to a contract for a definite period terminates the contract before the expiration of that period without a good and sufficient cause, he/ she becomes liable to pay to the other party half of the wages that would have been payable for the unexpired period.

Social security

Social security system

The Social Security Act provides for a number of benefits, including retirement and disability pensions, sickness, injury and unemployment benefits, medical assistance and other social allowances and benefits. Entitlement to certain assistance arises regardless of contributions while other benefits can be claimed on the basis of the contributions paid, or deemed paid, by the beneficiary. Maltese law also provides for free hospitalisation for all Maltese citizens.

Coverage

For the purpose of contribution obligations the Social Security Act categorises persons into persons in insurable employment, self-occupied persons and self-employed persons.

Generally speaking, persons in insurable employment are all persons employed in Malta saving certain exceptions. Foreign (non-EU) workers who are not ordinarily resident in Malta should not be deemed to be in an insurable employment if their employer is already paying or has opted to pay contributions in their respect under a scheme of social insurance in another country. Self-occupied persons are persons who are ordinarily resident in Malta and who derive income from a gainful occupation, other than an employment. Persons who are ordinarily resident in Malta and who are not in an insurable employment or self-occupied are categorised as self-employed persons.

EU Council Regulation (EEC) No. 883/2004 governing social security schemes in the European Union must be observed. Consequently, EU residents/ nationals that are employed or self-employed in Malta should generally be subject to Maltese social security legislation subject to certain exceptions. Persons employed or self-employed in one Member State posted to another EU Member State, where the anticipated duration of the assignment does not exceed 24 months and he/ she is not sent to replace another person, may continue to be subject to the social security legislation of the first mentioned State.

Contributions

Contributions in respect of an employed person are payable both by the employee and by his employer. The rate is, in each case, ten percent of the basic wage payable by each of the employee and employer. However, this is subject to a maximum and minimum rate. Currently the minimum weekly contribution stands at € 15.81 (or 10% of basic weekly wage if this is lower but the employer continues to pay the said minimum). On the other hand, the maximum weekly contribution varies depending on the age of the employee. In respect of an employee born before 1/1/1962, the maximum weekly contribution stands at € 33.50 whereas in the case of an employee born on or after 1/1/1962, the maximum weekly contribution stands at € 37.85 - again such minimum and maximum contribution rates are payable by each of the employer and the employee.

The contribution payable by self-occupied and self-employed persons is 15% of their earnings or income but it is, again, subject to a minimum and a maximum amount. For 2012 the minimum rate is € 27.25 per week and the maximum is € 56.78 per week for persons born from 1 January 1962 and € 50.24 per week for persons born up to 31 December 1961. Low income earners qualify for an exemption.

The employees' contributions are paid by means of a deduction from their wages together with and in the same way as tax (FSS). Each employer is responsible for forwarding monthly to the Department of Inland Revenue both the employees' and his share of social security contributions. Contributions due by self-occupied and self-employed persons are payable every 4 months in arrears together with their provisional tax payments. The Department of Inland Revenue acts as the collecting agent for the Department of Social Security.

Benefits

The main benefit under the scheme of social security is the two-thirds retirement pension. Every insured person (subject to a minimum number of paid contributions) becomes entitled, on retirement age, to a retirement pension. The full pension rate is equivalent to two-thirds of the pensionable income. The pensionable income for employees and self-employed/ self-occupied persons is the average annual basic wage calculated by reference to a number of years where the basis of calculation may differ on the basis of the date of birth of the particular individual. The current maximum two-thirds retirement pension is € 220.60 per week. The retirement pension is reduced in cases where the retiree does not have a full contribution record. Persons not entitled to the two-thirds pension or whose two-thirds pension would otherwise be reduced to below the National Minimum Pension, become entitled to the National Minimum Pension which, is € 123.01 weekly for a married person (maintaining the spouse) and € 102.71 weekly for any other person.

The Pensions Reform introduced by Act XIX of 2006 provided for a new pensions system in order to make it more adequate and sustainable for the future. The amending act provided for the establishment of a mandatory second pension and a voluntary third pension.

Living conditions

It is usually not difficult for foreign employees to find suitable accommodation in Malta at reasonable rates and the distance from any location to the place of work is always short. The pay package offered to foreign employees usually enables them to enjoy comfortable, European-style, living standards. Life in Malta can be attractive, considering the mild climate, the tourist attractions, the places of entertainment and the generally friendly population. Foreigners can freely communicate in English with government departments, in business establishments, at their place of work and for all other needs.

Foreign personnel

Work permits and restrictions on employment

Non EU-foreigners desiring to work in Malta require a work permit. These permits must be obtained in advance on an application of the prospective employer. Permission is normally granted when the skills, qualifications or experience involved are not already available in Malta.

Visas and residence permits

Persons entering Malta require a passport but an identity card is sufficient in terms of agreements with certain countries. Following accession to the EU, Malta is bound to the EU rules in respect of immigration. Malta also forms part of the Schengen area and is therefore subject to the Schengen rules.

Nationals travelling into Malta from certain countries may require a visa. Tourists may extend their stay in Malta for more than 90 days subject to the approval of the immigration authorities. Persons wishing to reside regularly in Malta may apply for a residence permit, which will be subject to a number of conditions.

Special arrangements or concessions

Foreign workers who contribute to the Maltese social security scheme may in general be entitled to contributory benefits. Malta has concluded bilateral agreements on social security with a number of countries, including the UK, Australia, and, the Netherlands.

The provisions of EU Regulation (EEC) No. 883/2004 override the provisions of any Social Security agreements concluded by Malta with other Member States prior to joining the EU.

Chapter 10

Accountancy and Audit Requirements and Practices

Investor considerations

- All accountants require a warrant to practice, which is issued by the Minister of Finance, the Economy and Investment upon the recommendation of the Accountancy Board, the body responsible for regulating all aspects of the accountancy profession. Accountants require a separate practicing certificate in order to act as auditors.
- Companies must keep proper accounting records sufficient to give a true and fair view of the company's results and affairs
- Companies must file an annual return and financial statements with the Registrar of Companies
- Accounting requirements are similar to those in the UK and in line with the EU Fourth and Seventh Directives
- The Companies Act and the Accountancy Profession Act make International Financial Reporting Standards as adopted by the European Union ("IFRSs as adopted by the EU") the default accounting framework with which companies' financial statements must comply
- Certain qualifying companies may however elect to adopt the Accountancy Profession (General Accounting Principles for Smaller Entities) Regulations, 2009 ("GAPSE") as their accounting framework
- Both quantitative as well as qualitative criteria must be met for a company to qualify for adoption of GAPSE. GAPSE can be adopted by companies which do not exceed any of the following three criteria:
 1. Balance sheet total: €17.5 million;
 2. Total revenue: €35 million (annualised for periods other than 12 months);
and
 3. 250 employees

GAPSE also cannot be adopted by companies if, amongst others:

1. A shareholder holding at least 20% of the entity's shares has served notice on the company to prepare financial statements that comply with IFRSs as adopted by the EU;
2. The entity's securities are listed;
3. The entity is a guarantor of the principal or interest on securities that are listed;
4. The entity is a public company; or
5. The entity holds a licence or other authorisation by the Malta Financial Services Authority

- A company with subsidiaries must submit consolidated financial statements for the group of companies. Certain exemptions exist for financial holding companies, small groups, and intermediate parent companies
- Companies are required to appoint independent auditors to hold office from each annual general meeting to the next
- Auditors are required to report to the shareholders on every set of financial statements furnished at a company's annual general meeting
- The Companies Act also requires that the report of the auditor should be drawn up in accordance with the International Standards on Auditing issued by the International Federation of Accountants

Accountancy profession

The accountancy profession in Malta is regulated by the Accountancy Profession Act. The Accountancy Board is appointed by the Minister of Finance, the Economy and Investment and made up of a chairman and ten other members, at least three of whom must be in possession of the warrant of certified public accountant. The Board regulates all aspects of the profession, including advising the Government on the approval of accounting and auditing standards, procedures, practices, and ethics and on the issue of guidelines and other services to practitioners. The Code of Ethics drawn up by the Board is modelled on the code recommended by the International Federation of Accountants.

In terms of the Act, accountants can qualify to obtain a warrant to function as such only under either of the following conditions:

- They have followed the accountancy degree course at the University of Malta or
- They possess an academic qualification relating to the accountancy profession that as at the time of application is recognised as sufficient by the Accountancy Board. In such cases the Board is bound to ensure that applicants have passed appropriate examinations in local taxation and relevant laws and it may also prescribe examinations in other subjects.

Holders of foreign accountancy qualifications are also generally accepted on the condition that they successfully sit for examinations in Maltese laws and taxation.

Adequate experience in the practice of accountancy is also required in order to qualify to obtain a warrant to practice as an accountant.

Statutory obligations

Accounting records

The Companies Act requires every company to keep proper accounting records for the following:

- All sums of money received and expended by the company, and details of the receipts and expenditure.
- All sales and purchases of goods by the company.
- The assets and liabilities of the company.

The accounting records, which must be available for inspection at all times by the directors, must be such as to explain the company's transactions and facilitate the preparation of financial statements. The records of accounts are usually to be kept at the registered office of the company in Malta, but the directors are entitled to decide otherwise. If the accounts are kept at a place outside Malta, financial statements and returns must be sent to and kept at a place in Malta. These financial statements and returns must disclose with reasonable accuracy the financial position at intervals not exceeding six months and must enable preparation of the statement of financial position (balance sheet) and income statement in accordance with the law.

Financial statements and directors' report

The directors of every company are required to furnish the shareholders annually at a general meeting with a set of financial statements including a balance sheet (referred to as a Statement of Financial Position in the IFRS Framework) and income statement, together with any other statement and accompanying notes as required in terms of IFRSs as adopted by the EU or, if applicable, as required in terms of GAPSE. The first general meeting for this purpose must be held not later than 18 months after registration of the company. Subsequently, such meetings must be held during each calendar year and not later than 15 months after the previous annual general meeting.

The income statement must cover the period commencing with the date of registration in the case of the first set of financial statements of the company, and thereafter the period from the preceding financial statements. The balance sheet as of the date to which the income statement is made up must be signed by at least two directors or, in the event that the company only has one director, by the sole director. The balance sheet and the income statement must give a true and fair view of the company's affairs and must be accompanied by an auditors' report. A report by the directors, dealing in general terms with the company's affairs and stating what amounts, if any, they propose to distribute as dividends and to carry to reserves, is also required. Additionally, the directors prepare a statement outlining their responsibility for safeguarding the company's assets, maintaining a proper system of internal control and preparing financial statements that comply with the Companies Act and IFRSs as adopted by the EU, or GAPSE, as appropriate.

The annual financial statements, together with the directors' and the auditors' reports, must be sent to the shareholders at least fourteen days before the company's general meeting.

The directors must submit the annual financial statements and the directors' and the auditors' reports for approval by the shareholders in general meeting as follows:

- Private company - within ten months after the accounting year-end.
- Public company - within seven months after the accounting year-end.

Filing of financial statements and reports

Companies are obliged to deliver to the Registrar a copy of the annual financial statements presented to the shareholders in the general meeting and of the directors' and the auditors' reports within 42 days from the end of the period for submitting annual financial statements to the general meeting.

Abridged accounts may be drawn up by small companies, defined as companies that on their balance sheet date do not exceed the limits of two of the following three criteria:

- Total assets - €2.56 million
- Turnover - €5.12 million
- Average employment - 50.

From a company law perspective, small private exempt companies are allowed to publish abridged financial statements which exclude the directors' report, the income statement, and certain notes to the financial statements.

Annual return

At least once every year a company is required to file with the Registrar of Companies an annual return signed by at least one director or by the company secretary giving the following information:

- Address of registered office.
- Summary of share capital and debentures.
- List of shareholders.
- Particulars of directors.

The return must show the position as on each anniversary of registration of the company and must be forwarded to the Registrar within 42 days from that date.

Form and content of financial statements

Basic financial statements

Financial statements submitted to shareholders usually include the following and must follow the required content and format set out by the law and IFRSs as adopted by the EU, or GAPSE, as appropriate:

- Directors' report
- Statement of Financial Position
- Income statement
- Statement of comprehensive income (this statement is applicable for companies that adopt IFRSs as adopted by the EU, and may be combined with the income statement)
- Statement of changes in equity (under GAPSE, this may be combined with the income statement if certain conditions are met)
- Statement of cash flows (cash flow statement)
- Notes to the above (inclusive of accounting policies)

Corresponding amounts for the preceding financial year must be shown for all items in the primary statements and in the accompanying notes. The balance sheet must show assets, liabilities and provisions classified under headings appropriate to the business, except that any class that is immaterial in amount may be included under the same heading as another class. Authorised and paid-up share capital, and any share premium and reserves must also be disclosed separately.

Statement of Financial Position

The broad headings of a typical statement of financial position are as follows:

- Assets
 - Non-current assets
 - Current assets

- Equity
 - Called-up issued share capital
 - Reserves

- Liabilities
 - Non-current liabilities
 - Current liabilities

Income statement

The income statement typically includes the following information:

- Revenue
- Cost of sales
- Gross profit
- Distribution costs
- Administration expenses
- Other income/(expenses)
- Operating profit
- Investment and other related income, (distinguishing between subsidiaries, associates and other financial assets)
- Finance income and finance costs
- Share of profit/(loss) of associates and joint arrangements (where the equity method of accounting is applied)
- Provision for current and deferred tax liability
- Non-controlling (previously referred to as minority) interest (in consolidated financial statements)

Cost of sales, Distribution and Administrative expenses may alternatively be presented by nature of expense (Eg. Purchases, employe benefit expense, etc.) instead of by function.

Consolidation

Unless a parent company qualifies for exemptions as referred to above, consolidated financial statements must be prepared and presented by a company having subsidiaries. The results of associates are included using the equity method of accounting.

Provisions and reserves

The term “reserve” is not used to describe any amount written off or retained by way of providing for depreciation or diminution in value of assets or retained for the purposes of providing for any known liability. For these purposes, the term “provision” is used. “Capital reserves” do not include any amount regarded as available for distribution. “Revenue reserves” are all reserves other than capital reserves. Reserves and provisions are not deductible for tax purposes.

Notes to the financial statements

The following are some of the various items that require disclosure in the notes to the financial statements:

- A statement of accounting policies
- Directors' emoluments, staff costs and average number of employees
- Auditors' remuneration, separately disclosing Annual statutory audit, Other assurance services, Tax advisory and compliance services, and Other non-audit services.
- Details of cost or valuation and depreciation of non-current assets
- Name, registered address and percentage of shares held in the case whereby the reporting enterprise holds investments in subsidiaries, associates or joint ventures
- Details of borrowings and security given
- Nature, extent and management of financial risk and capital risk (this disclosure is not applicable for companies reporting in accordance with GAPSE)
- Related party transactions
- Contingent liabilities
- Capital commitments

Financial statements prepared in accordance with GAPSE

GAPSE contains a number of measurement simplifications when compared to IFRSs as adopted by the EU. For example, all assets may, under GAPSE, be measured at cost less, if applicable, impairment. Goodwill and intangible assets with 'indefinite useful lives' are amortised over a maximum period of 20 years, while an impairment test is only required if there is an indication that the asset may be impaired.

GAPSE also contains a number of disclosure relaxations when compared to IFRSs as adopted by the EU. Amongst others, the following disclosures are not required:

- The impact of future standards
- Critical accounting estimates and judgements
- Financial risk and capital management
- Assets, liabilities and revenues of associates
- Expenses by nature
- Comparatives for reconciliations of carrying amounts of certain assets such as property, plant and equipment, investment property and intangible assets
- Ultimate controlling party; and
- Transactions with key management personnel

Auditors and audit requirements

Appointment of auditors

Companies must appoint auditors at each annual general meeting to hold office until the next general meeting. The first auditors of the company are usually appointed by the directors, but thereafter the auditors are appointed by the company in general meeting. If no auditor is appointed at an annual general meeting, the court may be requested to make such an appointment by any of the directors or shareholders. The directors may fill any casual vacancy.

To qualify for appointment as auditor of a company, a person must hold a warrant to act as accountant under the Accountancy Profession Act and is issued with an auditing practicing certificate by the Accountancy Board. To audit banks or companies engaged in the business of insurance, an auditor requires further authorisation from the Regulatory Authority. Certain persons are disqualified from appointment as auditor of a company, e.g. officers or employees of that company, persons employed by an officer or employee of that company etc. Most companies today appoint firms of accountants as auditors and, in addition, frequently look to them for other services, especially in the fields of taxation and other financial matters, subject to normal professional independence rules.

Rights of auditors

The auditors of a company have the right of access at all times to the accounting records and documents of the company and are entitled to require from the officers of the company such information as is necessary for the performance of their duties. The auditors are entitled to attend all general meetings of shareholders and to receive all notices of and other communications relating to any general meeting that a shareholder is entitled to receive. Auditors also have a right to be heard at any general meeting with regard to any part of the business that concerns them as auditors.

Auditors' report

The auditors of a company are required by the Companies Act to make a report to the shareholders on the annual accounts examined by them, which is furnished to the shareholders in advance of the annual general meeting (see "Financial statements and directors' report" above). The auditors' report, which must be drawn up in accordance with the Companies Act and International Standards on Auditing, must state whether, in the auditors' opinion, the accounts have been properly prepared in accordance with the Companies Act and IFRSs as adopted by the EU, or GAPSE, as applicable, and whether they give a true and fair view of the financial position, financial performance and cash flows of the company.

Where a company has subsidiaries, the auditors must also state whether in their opinion the consolidated financial statements as a whole, so far as concerns members of the company, give a true and fair view.

The auditors of a company also have responsibilities under the Companies Act to report to the company's shareholders if, in their opinion:

- the information given in the directors' report is not consistent with the financial statements
- adequate accounting records have not been kept, or that returns adequate for their audit have not been received from branches they did not visit
- the financial statements are not in agreement with the accounting records and returns
- they have not received all the information and explanations they require for their audit, and
- certain disclosures of directors' remuneration specified by law are not made in the financial statements, giving the required particulars in their report

Auditing standards

The Companies Act requires that the report of the auditor should be drawn up in accordance with the International Standards on Auditing of the International Federation of Accountants. When matters come to the auditors' attention that prevent an unqualified opinion, they must set out clearly the reasons why they are unable to give an unqualified opinion.

Chapter 11

Tax System

Principal taxes

The principal taxes under Maltese law are:

- Income tax, which includes tax on income and on capital gains of individuals, companies and other entities
- Value Added Tax
- Duty on documents and other transfers (stamp duty), including tax on the inheritance of property and shares
- Customs duty
- Excise tax

Other taxes include the eco-contribution, motor vehicle registration tax, the oil bunkering tax and a number of licence and registration fees. Social security contributions are payable by employees and their employers and by self-occupied and self-employed persons. There is no tax on capital, other than stamp duty and there are no local taxes. A final withholding tax applies in respect of transfers of immovable property situated in Malta (ref. chapter 12 for further details). However, in certain cases the taxpayer may elect not to be taxed at the final withholding tax but be subjected to the normal charge to income tax at the rates applicable to the particular taxpayer.

The government revenue from taxation during 2010 amounted to €2434 million and was spread as follows:

	Percentage of total tax revenue
Income tax (€801 million)	32.9
Value Added Tax (€483 million)	19.9
Customs and Excise (€ 188 million)	7.7
Social Security contributions (€ 552 million)	22.7
Others (€410 million)	16.8

Income Tax

The laws regulating income tax are the Income Tax Act and the Income Tax Management Act. Subsidiary legislation under these laws includes rules on capital allowances, the final settlement system (FSS), provisional tax, fringe benefits and capital gains. Provisions relevant to income tax are contained in a number of other laws, such as the exemption for shipping activities under the Merchant Shipping Act. Tax incentives are available in terms of the Business Promotion Act and the Malta Enterprise Act.

As a member of the European Union, Malta has adopted all EU tax directives which include the parent-subsidiary directive, the mergers directive and the interest and royalties directive.

The scope of the tax

Source of income and capital gains

Income tax is levied on income in general and on certain specified capital gains.

Income is categorised under the following headings:

- income from a trade, business, profession or vocation
- income from an employment or office
- dividends, premiums, interest or discounts
- pension, charge, annuity or annual payment
- rents, royalties, premiums and any other profits arising from property
- income not falling under the above categories
- Capital gains are subject to tax if they are derived from the transfer (including any alienation under any title) of:
 - o immovable property
 - o securities, defined as shares and stock and such like instruments that participate in any way in the profits of the company and whose return is not limited to a fixed rate of return, units in a collective investment scheme and units and such like instruments relating to linked long term business of insurance
 - o business, goodwill, business permits, copyright, patents, trademarks and trade-names
 - o beneficial interest in a trust
 - o interest in a partnership
 - o securities which were subject to an intra-group exemption, which group ceases before the lapse of six years
 - o market value of shares through a change in the issued share capital or voting rights of a company

There are different rules for determining the taxable amount of income and the taxable amount of capital gains. Similarly, certain provisions apply or do not apply in the computation of the taxable amount falling under specific categories of income or capital gains. But the tax is charged on a unitary basis and, as a rule, a taxpayer is liable to one tax on the total amount of his taxable income and capital gains for the respective year. Saving those cases where special rules apply, “income” is used to denote income and capital gains.

Persons subject to tax

Tax is charged on the income and capital gains of every person. A “person” includes an individual, a company and any other body of persons and there is no separate law for the taxation of corporations. Rules that apply specifically to corporations are discussed in chapter 13 while rules that apply specifically to individuals are discussed in chapter 15.

Year of assessment

Tax is charged for every calendar year (year of assessment). As a rule, the income chargeable to tax for a year of assessment is the income for the preceding calendar year. However, the basis period for companies whose financial year does not end on the 31 December is (subject to the authorisation of the Commissioner of Inland Revenue) the financial year ending in the year preceding the year of assessment. A number of provisions require taxpayers to make payments of tax on account of their tax liability for a year of assessment during the basis period.

Basis of taxation

Persons who are ordinarily resident and domiciled in Malta are liable to tax on their world-wide chargeable income and capital gains. A person who is resident but not ordinarily resident and domiciled in Malta is subject to tax on chargeable income and capital gains arising in Malta and on income (but not capital gains) arising outside Malta and received in Malta. A person who is not resident in Malta is subject to tax on chargeable income and capital gains arising in Malta.

Exemptions

The Income Tax Act provides for a number of exemptions. These include an exemption from tax on:

- interest, discounts, premiums or royalties derived by a non-resident person as long as the income is not connected with a permanent establishment situated in Malta
- capital gains derived from transfers of units in a collective investment scheme, units relating to the business of insurance, any interest in a partnership, shares or securities by a non-resident person as long as they are not derived from the transfer of shares in a company/partnership whose assets consist principally of immovable property situated in Malta
- Income derived from patents in respect of inventions which income is also exempt from tax in the hands of the shareholders

A non-resident person qualifies for these exemptions if he is the beneficial owner of the interest, royalties or capital gains in question and is not owned or controlled by, nor acts on behalf of, an individual who is ordinarily resident and domiciled in Malta.

Exemptions from tax on capital gains include an exemption on the disposal of one's sole ordinary residence and of certain securities listed on a recognised Stock Exchange.

An exemption also applies to income or gains derived by a company registered in Malta from a participating holding or from the disposal of such holding (also known as the participation exemption) as long as the applicable conditions are satisfied.

Certain tax exemptions are provided for in other laws, such as the exemption for shipping companies under the Merchant Shipping Act and the tax incentives under the Business Promotion Act and the Malta Enterprise Act. Exemptions may also be granted by the Minister of Finance by means of an exemption order. A number of specific tax exemptions are referred to in other chapters of this Guide.

Deductions

General rules

In the determination of his taxable income a taxpayer is allowed to deduct expenses and outgoings to the extent that they are incurred wholly and exclusively in the production of the income. This test requires a very close connection between the expense and the income against which it is claimed, and it is not enough to show that the expense is a business expense or that it is connected with the income. Pre-trading and post trading expenses do not satisfy this test. The law generally disallows expenditure of a capital nature or for a capital purpose (except in the computation of taxable capital gains). This general rule is subject to a number of specific provisions. These include:

Interest

Interest on any borrowed money is an allowable deduction if it is paid on capital employed in acquiring income. The expense is allowable even though the borrowing would have been made for a capital purpose but it is deductible only against the income derived in the same year from the employment of that capital. This special rule is in addition to the deduction for interest paid on money due on revenue account, such as interest on trade debts or charged on normal business overdraft facilities.

Bad debts incurred in a trade, business, profession or vocation

Bad debts of an income nature are allowed in the year they become bad if proved to the satisfaction of the tax authorities. No deduction is given for provisions for bad debts and for bad debts incurred in activities other than a trade, business, profession or vocation. Bad debts of a capital nature may be allowed as a deduction against capital gains (see below). Any bad debt that is later recovered is deemed as income for the year in which it is received.

Loss incurred in a trade, business, profession or vocation

Losses incurred in a trade, business, profession or vocation are allowable as a deduction against income from any other source and against capital gains. If they cannot be absorbed by income and capital gains for the year, they are carried forward indefinitely to be deducted against subsequent years' income and capital gains (where applicable) until they are fully absorbed. Losses are calculated in the same manner as income. Any losses incurred outside Malta that would not have been subject to tax had they been income are not deductible. Company trading losses may be surrendered under the group relief provisions (see Chapter 13). Generally, capital losses may be deducted against subsequent capital gains (see below).

Capital allowances

A taxpayer is not allowed to claim accounting depreciation as a deduction but may claim the statutory capital allowances on fixed assets used in the production of his income. The assets that qualify for capital allowances are:

- Plant and machinery, including machinery, equipment, fixtures, motor vehicles and similar fixed assets
- Industrial buildings and structures, including hotel buildings but excluding the cost of land

Capital allowances on plant and machinery are granted at the rates laid down in the Deduction (Wear and Tear of Plant and Machinery) Rules (Appendix II). Capital allowances on industrial buildings and structures, including hotel buildings, consist of an initial deduction of 10% and an annual deduction of 2% of the cost of acquisition of the asset or additions. Capital allowances are allowed in full for the year of acquisition and no allowances are allowed for the year of disposal.

When an asset that qualified for capital allowances is sold, transferred, destroyed, or otherwise put out of use, a balancing statement is to be prepared. If the tax written down value is higher than the value on disposal, the difference is allowed as a further capital allowance (balancing allowance). If the tax written down value is lower, the difference represents a balancing charge, but the charge cannot exceed the total capital allowances granted on that asset. The balancing charge is either added to the taxpayer's chargeable income or, at the option of the taxpayer and subject to specific conditions, deducted for capital allowances purposes from the cost of acquisition of any fixed asset replacing the asset that has been disposed of. No balancing statement is to be prepared and no right to a balancing allowance or liability to a balancing charge arises if the asset is disposed of after the source of income in respect of which it had been used has ceased to exist.

Capital allowances may only be deducted from income derived from the activity in which the respective assets are used. When, apart from and before taking capital allowances into account, there is a tax loss or insufficient tax profits to absorb the capital allowances for the year, the unabsorbed amount is not added to the trading losses but is carried forward separately until it is fully absorbed against the same source of income. If the related source of income is discontinued before the unabsorbed balance has been fully utilised, the balance is lost, even if the taxpayer is still in business.

When an investment allowance is due under the Business Promotion Act (Chapter 3) it is allowed in addition to the capital allowances referred to above.

No depletion allowances are available in Malta. The statute specifically disallows any deduction for loss, diminution, exhaustion, or withdrawal of capital.

Leasing agreements

Leasing costs are normally fully deductible, except in the case of leased motor vehicles. Deductions for lease payments on vehicles are restricted when the listed value of a vehicle exceeds €14,000. The listed value is that assigned by the Inland Revenue Department for fringe benefits purposes, increased by the cost of accessories. In such cases, the allowable lease payment is calculated by using the following formula:

Lease		€ 14,000
Payment	x	Listed value of vehicle

Capital allowances on leased assets can be taken by the owner or by the person making use of the asset, depending on the terms of the lease agreement as to which party assumes the burden of wear and tear.

Specific rules apply to assets leased in terms of a finance lease when the lessor is a company licensed as a financial institution and the lease is a qualifying finance lease (as defined).

Expenditure on scientific research

A deduction is available for expenditure on scientific research. If the expenditure is of a capital nature, then the expenditure is allowed as a deduction over a period of six consecutive years from the date in which the expenditure was incurred. At the option of the taxpayer, a deduction equal to 150 percent of the expense is allowed in the year in which the expense is incurred, subject to the condition that the inflated expense does not exceed 5 percent of total turnover in the same year. Any portion of the inflated amount which cannot be absorbed in a particular year may be carried forward to future years until it is fully absorbed.

Patents and patent rights

Expenditure of a capital nature on patents and patent rights is allowable as a deduction over a reasonable number of years, according to its expected life span. Whenever expenditure on patent and patent rights has been allowed as a deduction, any sums receivable from the sale of the relative asset are taxable as income in the year in which they are received.

Expenditure on business promotion and market research

A deduction is specifically allowed in respect of expenditure incurred for the purpose of promoting a trade, business, profession or vocation including any expenditure on market research and obtaining market information, advertising or other means of soliciting business, providing samples and participating in fairs and exhibitions.

Expenditure on intellectual property

When a person incurs capital expenditure to acquire intellectual property rights and such rights are used for the benefit of the company's trade, business, profession or vocation, the cost is spread evenly over a 3-year period.

Employee remuneration

The cost of emoluments, including fringe benefits, is allowed as a deduction to the extent that it has been correctly reported under the Final Settlement System Rules. Social security payments that a taxpayer makes on behalf of its employees are deductible in full. Contributions towards a private pension scheme are allowed as a deduction only if the scheme is approved. If the scheme is not approved the contributions may be treated as fringe benefits and deductible as costs of emoluments.

Payments made to employees on the termination of their employment or on dismissal are deductible against the employer's income if they satisfy the general rule as payments of a revenue nature incurred in the production of the income. Such payments are usually regarded as taxable emoluments and are deductible against the employer's income if properly recorded for the purposes of the Final Settlement System Rules. Their classification, however, is not always clear and the classification in the employee's hands is not necessarily valid for the employer.

Other deductions and non-deductible items

Exchange gains and losses are taken to the tax computation when realised.

Expenses on repairs of fixed assets used in the production of the income are allowed as a deduction. Repairs must however be distinguished from improvements. Improvements to fixed assets are expenses of a capital nature and the right of deduction would be regulated by the rules on capital allowances.

Expenses in the category of travel and entertainment are only deductible as long as they relate to the business. Any expenses of a personal nature are to be added back in the tax computation. It is therefore advisable for such expenses to be scrutinised, itemised and well-documented.

Charitable and philanthropic contributions are generally not deductible, unless the donation is to certain approved institutions. A donation may qualify for deduction if it can be shown that it has a promotional value and may therefore be treated as advertising costs.

Legal and accountancy fees paid in the normal course of the trade or business are deductible. Professional fees connected with the setting up or the restructuring of a business and similar capital expenditure are not deductible. Fees connected with the purchase of capital items may, in appropriate circumstances, be capitalised into the cost.

In general, it is more difficult to claim deductions connected with unearned income, such as dividends, interest and rents since income in such cases is deemed to arise from the investment and the costs would be merely attributable to the holding and management of the investment. Deductions in such cases would typically be limited to any interest paid on capital used to acquire the investment, and would be subject to the restrictions mentioned above on deductions for interest.

Special rules apply to rent from immovable property. The deductions in this case are limited to interest on loans used to acquire the property, ground rent and similar burdens on the property, licence fees and a 20% “further deduction”. These special rules do not apply to rent from property used in the holiday business on short lets. In such cases the income would normally qualify as business income and the relative expenses would be allowed without the limitation of these special rules.

Deductions that may be claimed in the computation of capital gains

When a taxpayer has opted not to subject the transfer of immovable property to the final withholding tax (where this is allowed by law), gains derived from the transfer of immovable property qualify for the following deductions:

- The cost of acquisition and the cost of improvements
- Costs related directly to the acquisition, such as notarial fees and stamp duty
- A deduction for maintenance of 0.4% per annum
- A deduction for inflation calculated by reference to the published cost of living index
- Costs directly related to the transfer, such as commissions, not exceeding 5% of the sale price

The taxable gain on a transfer of securities is the excess of the transfer price over the cost of acquisition, but special relief is available in the case of securities acquired before 1992.

Detailed rules apply to transfers of shares held in a company, when a holding is considered a “controlling interest” (as defined). Capital gains/ losses upon transfers of a “controlling interest” are determined by reference to the higher of the “market value” (as defined) of the shares being transferred and their actual consideration. The Rules also provide for the manner in which the cost of the shares being transferred is to be determined.

Generally, losses and bad debts of a capital nature are allowed as a deduction against subsequent capital gains as long as they were incurred in transactions that were subject to tax on capital gains. Losses incurred in a trade, business, profession or vocation are deductible from gains or profits from other sources, including capital gains.

Tax computation

Tax is charged on the chargeable income, which is the total of the taxable income and capital gains after excluding exemptions and allowing for deductions. In the case of companies and other business concerns, the computation takes the form of adjustments to the accounting profits. An example of a computation is given in Appendix III.

Double Taxation Relief

Taxpayers satisfying the relevant conditions are entitled to double taxation relief on income arising outside Malta that is included in their chargeable income. Relief is granted in the form of a credit. The foreign income is grossed up with the foreign tax and taxed at the applicable Maltese rate. The foreign tax is then deducted from the Maltese tax but the deduction cannot exceed the Maltese tax on the doubly taxed income and there are no provisions for pooling of relief or for carrying forward unutilised relief. Double taxation relief is available in terms of the relative tax treaty or, on the absence of a treaty, in accordance with the unilateral relief provisions of the Income Tax Act. Subject to certain conditions, companies may claim relief under the flat rate foreign tax credit method, where the foreign tax is deemed to amount to 25% of the income received in Malta. Qualifying taxpayers receiving dividends from foreign investments also qualify for relief for the underlying tax (see Chapter 13), subject to satisfying the applicable conditions.

Chapter 12

Tax Administration

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

- The Inland Revenue Department, headed by the Commissioner of Inland Revenue, for income tax and stamp duty
- The Value Added Tax Department, headed by the Commissioner of VAT, for value added tax and eco contribution
- The Customs Department, headed by the Comptroller of Customs, for import duty and excise tax

The collection of value added tax on importations is administered by the Comptroller of Customs acting on behalf of the Commissioner for VAT. The Commissioner of Inland Revenue collects social security contributions on behalf of the Director of Social Security.

Income tax registration and deregistration

Any person who derives income that is subject to Maltese tax is required to register with the Inland Revenue Department. Registration is a simple procedure and is effected on the basis of a minimum set of particulars of the person concerned. The registration number would normally identify the taxpayer as an individual or a company and there are certain categories of individual taxpayers, but the classification has no statutory relevance to the tax treatment of the taxpayer.

Taxpayers who no longer derive income that is subject to Maltese tax may request their deregistration. The department will only cancel a registration after ascertaining that all outstanding tax returns have been filed and all tax due has been settled. Before the registration is cancelled the taxpayer is bound to continue filing tax returns even if he no longer has any 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 the following 30 September. 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. The tax return due date for individuals and other taxpayers is the 30 June. The tax return must include a self-assessment.

The self assessment system

Every taxpayer must make a computation of his own tax liability in his tax return. An exception can apply with respect to certain individuals where the Commissioner gives notice in writing to this effect to such persons. Such notice would typically be given to individuals whose income is solely derived from employment or pensions, certain investments (falling within certain statutory parameters) the transfer of immovable property which has been subject to the 12% final tax, and dividend income earned from shares listed on the Malta Stock Exchange or from other public companies. In such cases the taxpayer has no obligation to file a tax return and a tax statement is issued by the Commissioner of Inland Revenue based on the information available to him.

In circumstances where a person receiving such notice has further income to be disclosed, that person will be obliged to file a tax return within a specified time limit.

A taxpayer may make an adjustment to his self-assessment by means of an additional return as long as he has not in the meantime received a revenue assessment. If the adjustment reduces the tax liability it must be made within 5 years from the end of the relative year of assessment.

The tax shown in the self-assessment, taking into account adjustments made by means of additional returns, is deemed to represent the actual tax liability of the taxpayer. The department may make arithmetical adjustments but otherwise no further procedure is required. The taxpayer will normally receive a statement showing the tax due in accordance with his own self-assessment.

Revenue assessments

When a taxpayer has not filed a tax return the Commissioner may determine the tax liability on an estimated basis. The estimate will have the same effect as a self-assessment but will be automatically cancelled if the taxpayer subsequently files a tax return, including a self-assessment. If the Commissioner of Inland Revenue disagrees with a self-assessment he may make a revenue assessment. Revenue assessments may be raised within 5 years from the end of the year in which the self-assessment was filed. If the self-assessment does not contain a full disclosure of all material facts or contains incorrect or misleading information in any material respect an assessment may be made at any time.

Penalties

Late returns attract penalties ranging from €10 to €500 for individuals and from €50 to €1,500 for companies, depending on the lateness of the return. Penalties are also imposed in the case of returns containing omissions. The penalty is calculated at 1.5% per month of the endangered tax (and may be reduced to 0.75% if the taxpayer submits a further return after the taxpayer has been notified that an inquiry will take place and before an assessment is issued by the Commissioner). A return that does not disclose all the income or a self-assessment that includes a deduction or a set-off that is not due is for this purpose deemed to contain an omission. When a self-assessment is corrected by a further return (referred to as an adjustment form) before the Inland Revenue Department has issued a notice of inquiry and, is delivered not later than 12 months after the relative tax return due date, the penalty for the omission is fully remitted whereas if it is delivered after 12 months the penalty for omission amounts to 0.1% per month of the endangered tax. Furthermore, omission tax is capped at sixty times the applicable rate. Additionally, interest at 0.75% per month is charged on the late payment of the tax.

Objections and appeals

A taxpayer who disagrees with a revenue assessment may file a notice of objection on condition that he has filed the relative tax return and paid the tax that is not in dispute. The Revenue may accept the objection or come to an agreement with the taxpayer. Otherwise the Commissioner will issue a notice of refusal. At that stage, the taxpayer may, within 30 days from the date of service of the notice of refusal, appeal to the Administrative Tribunal, which is an independent body set up for this purpose. An appeal against a decision of the Tribunal may subsequently be made to the Court of Appeal on points of law only.

Payment of the tax

Various provisions and rules require the payment of the tax during the year in which the income arises. The different methods are described briefly below. Any amount of tax for a year not settled under these systems becomes payable on the tax return date. Late payment of tax is subject to interest at 0.75% per month.

Final settlement tax

The Final Settlement Tax system is an elaboration on the PAYE system and requires employers to deduct tax from the wages of their employees. It also applies to the payment of a retirement pension under the Social Security Act. The tax is deducted at a rate determined by reference to the amount of the employee's wages for the year, including the value of fringe benefits, and his personal status and is adjusted from month to month to take into account changes in the circumstances. Employers are also required to deduct social security contributions from wages. Deductions of tax and social security contributions made every month must be remitted to the Inland Revenue Department by the last day of the following month.

Provisional tax

Companies and self-employed individuals must make provisional tax payments on the 30 April, the 31 August and the 21 December. The total provisional tax payable during each year or, in the case of companies, during each financial year, is an amount equal to the tax chargeable according to the last self-assessment that was due to be filed before the commencement of the calendar year in which the first provisional tax payment falls due. The Commissioner of Inland Revenue has the right to increase the amount payable. The taxpayer has the right to reduce the amount but will be liable to additional tax if the reduction results not to be justified. 20% of the total provisional tax payable is due on the first PT payment, 30% on the second PT payment and 50% on the last PT payment. Companies and self-employed persons must report their income in their tax returns and make a self-assessment. The provisional tax payments are credited against their tax liability on their total income.

Final withholding tax on investment income

Investment income payable to residents is subject to 15% withholding tax. Investment income includes:

- interest on local bank deposits
- income from certain other local investments
- capital gains on the redemption, liquidation or cancellation of shares or units in non-prescribed funds of a collective investment scheme licensed in Malta
- capital gains on the surrender or maturity of certain linked long term insurance policies
- profits distributed by a non-resident collective investment scheme out of profits that had been allocated in that collective investment scheme to a non-prescribed fund and interest paid by a foreign bank when the payment is made through an authorised intermediary in Malta

No further tax is payable on such investment income and individuals have the option of not reporting such income in their tax returns. However, residents have the option to request the payment of investment income without withholding tax, in which case they will be required to report it in their tax return and will be liable to tax, if any, at their normal rates. Investment income paid to non-residents is not subject to withholding or any other tax.

Final withholding tax on contracts relating to long term business of insurance

Any amount payable by an insurer carrying on long term insurance business in Malta to a policyholder resident in Malta on the maturity or surrender of the policy or in any other circumstance, other than on a death claim, is subject to tax at 15%. The amount is payable by the insurer and the amount is not subject to any further tax in the hands of the policyholder. No tax is withheld on payment to non-residents or on the payment of a death claim.

Final tax on Property Transfers

As from 1st November 2005, transfers of immovable property situated in Malta are subject to a final tax, which is payable within 15 working days from the date of the deed of transfer. The final tax is equivalent to 12% of the transfer value. In the case of property which had been acquired by inheritance, the final tax is equivalent to 7% of the transfer value if the property was inherited prior to 25th November 1992 and 12% of the difference between the transfer value and the transmission value if the property was inherited on or after 25th November 1992.

The transfer value is deemed to be the higher of the consideration received and the market value of the immovable property as at the date of transfer. There are a number of situations where the transferor may opt out of the final tax system, amongst which is the situation where the transferor had owned the property for less than seven years prior to the transfer.

Provisional tax on capital gains

If a person makes a transfer that falls within the scope of the tax on capital gains (e.g. transfers of immovable property not subject to final tax on property transfers, securities or intangible assets) he must pay provisional tax at the rate of 7% of the consideration. This tax is not final except when immovable property was acquired by the transferor by inheritance before 25th November 1992. The capital gains on the transfer must be reported by the transferor in his tax return and taxed at the normal rates. The provisional tax will then be allowed as a credit and any excess credit will be refundable. The Commissioner may authorise a reduced or nil rate of provisional tax in cases where the transfer is exempt from tax or where it is shown that provisional tax at 7% will exceed the actual tax liability.

Tax on Capital Gains arising to non-residents

If, in any particular case, the Commissioner has reason to believe that a person who intends to transfer immovable property may leave Malta before the tax that may become due on that transfer or any other tax that may be due by that person is paid, he may require the notary engaged to publish the deed of that transfer to give notice stating amongst others details of the proposed transfer, the details of the parties concerned, a description of the property, the date of the proposed transfer and the consideration at which the proposed transfer is to be made,

When a notary is engaged to publish a deed of a transfer of immovable property and the transferor is a person who is either not resident in or not a citizen of Malta, that notary shall give notice as referred to above not less than two months before the date set for the publication of that deed.

Payments to non-residents

As stated above, and subject to the applicable conditions, non-residents qualify for exemptions from withholding or any other tax on dividends, interest, royalties, capital gains, long term insurance business policies and other investment income. Saving these exemptions, payments to a non-resident of income chargeable to Maltese tax are subject to withholding tax at 35% if the non-resident is a company and 25% in other cases.

Payments of income will not represent, or will not fully represent, chargeable income if the income arises outside Malta, or is not taxable in Malta in terms of a tax treaty or on account of exemptions, or qualifies for deductions. The onus to withhold tax is on the payer. Where the payer is not in a position to determine the extent to which the income is subject to Maltese tax, if at all, he may request a determination from the Commissioner of Inland Revenue and the Commissioner may authorise a nil or a reduced withholding tax rate. Tax withheld under this provision is not final. If the non-resident declares the income in a tax return the tax withheld is granted as a credit and any excess credit is refundable.

Payments to foreign employees

Employers are bound to give the Commissioner of Inland Revenue details of the employment of foreign individuals. Employers are, moreover, bound to give the Commissioner a one-month's prior notice of the termination of the employment of foreign individuals and may not release the final payment due to a foreign employee before the expiration of that period. Moreover, an employer may be appointed by the Commissioner as representative taxpayer of a foreign employee and responsible for his tax obligations.

Final tax payments and tax refunds

The self-assessment shows the chargeable income, the tax on the chargeable income, credits in respect of double taxation relief and incentive legislation and the credits for tax already paid under the systems discussed above. Any tax not covered by these credits becomes payable on the tax payment date, which is the date when the self-assessment is due to be filed. If any tax results to be payable in terms of a Revenue assessment it will be deemed to have become due on the tax payment date. If the taxpayer files an objection, the payment of the amount in dispute may be held in abeyance until the objection is finally determined, but any amount still resulting to be payable at that stage will, again, be deemed to represent tax that fell due for payment on the tax payment date. Late payments are subject to interest at 0.75% per month or part thereof.

When the credits claimed in the self-assessment exceed the tax due on the chargeable income the balance becomes refundable. Refunds due to individuals become payable on the 1 January of the year immediately following the relative year of assessment. Refunds due to companies and commercial partnerships become payable on the last day of the sixth month following the tax return date. If a taxpayer files the tax return late, or files an additional return after the tax return date, the payment of the refund is postponed to 12 months from the date of late filing. Late payments of refunds are subject to interest at 0.75% per month or part thereof.

Refunds due to any person in terms of Articles 48(4) and 48(4A) of the Income Tax Management Act (see Chapter 13) are payable within 14 days following the day on which the refund becomes due.

Anti tax avoidance rules

Maltese tax legislation contains some very wide anti-avoidance measures. For income tax purposes the tax authorities are empowered 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. Other rules provide for more specific anti-avoidance measures. The Commissioner may issue an order in writing to determine the tax liability / entitlement to tax refund in such manner as may be necessary and to nullify or modify the scheme and consequent advantage. The taxpayer has the right to object this order and to appeal from the decision of the Commissioner refusing that objection.

Revenue rulings

A company is entitled to request a binding ruling that a transaction to which it is a party will not be treated as an income tax avoidance scheme and the tax authorities will issue that ruling if they are satisfied that the transaction will be effected for bona fide commercial reasons. Advance binding revenue rulings may also be requested on a number of other specified matters, mainly related to international business.

Income tax rulings are binding on the Revenue for a period of five years, which may be renewed for another five years. If the law on the particular subject is changed during the operation of a ruling, that ruling remains binding either until the end of the relative five-year period or for two years following the amendment, whichever is the shorter. Revenue rulings on matters not specified in the law are not legally binding.

Enforcement of tax claims

Tax authorities have certain privileges in legal procedures for the enforcement of claims. A request for payment of tax that is not in dispute will constitute an executive title without the need of requesting a court judgement. Claims for the payment of income tax do not enjoy any preferential ranking, but claims for the payment of income tax and social security contributions deducted from employees' wages rank equally with the wages.

Tax audit

The tax authorities examine the tax returns submitted to them in varying degrees of detail. They have full powers to make further investigations after the submission of returns and to request further details, information, records, and returns. Subject to certain conditions and safeguards, they have a power of entry into business and professional premises. The taxpayer and/or the taxpayer's representatives must also appear at the tax office to answer questions personally when asked to do so.

Tax records

Taxpayers carrying on a trade, business, profession or vocation must keep full records relevant to the determination of their taxable income, including records of all expenses, records of sales and purchases, a profit and loss account, a balance sheet, and all supporting documents. In the case of companies registered in Malta (i.e. including not merely companies incorporated or otherwise resident in Malta but also companies which although not resident here, carry on any activity in Malta, and in the case of companies which are neither incorporated nor resident here includes companies that are registered for this purpose with the Commissioner in such manner as may be prescribed), the balance sheet and the profit and loss account must comply with the requirements of the Companies Act and must be audited. Companies may be constituted with a share capital denominated in a foreign convertible currency and must prepare accounts and pay tax in the currency of their share capital. Records must, for tax purposes, be kept for at least nine years.

Taxpayers may also be requested to furnish such information and documentation as may be necessary by the Commissioner of the Inland Revenue Department. This request is done to satisfy any information required by foreign tax authorities where arrangements between Malta and the respective State or its tax authorities exist for the reciprocal exchange of information for tax purposes.

Chapter 13

Taxation of Companies and Shareholders

Company tax system

Companies are subject to income tax and tax on capital gains in terms of the Income Tax Act and there is no separate law charging corporation tax. The general rules discussed in Chapters 11 and 12 apply to companies as well as to other persons. This chapter highlights the income tax provisions that are specifically relevant to companies.

Meaning of company

For income tax purposes, a company means a body of persons that falls under any of the following categories:

- A limited liability company constituted in Malta (provided that in the case of cell companies carrying on insurance business, every cell and that part of the company in which non-cellular assets are held are deemed to be a separate company)
- A partnership en commandite constituted in Malta whose capital is divided into shares
- A body of persons incorporated outside Malta of a nature similar to the limited liability company or to the partnership en commandite whose capital is divided into shares
- A cooperative society registered under the Co-operative Societies Act

Bodies of persons not covered by the definition of “company” include corporations constituted by an Act of Parliament, partnerships en nom collectif, partnerships en commandite whose capital is not divided into shares, civil partnerships and similar foreign entities.

When a foreign company sets up a place of business in Malta it is required to be registered under the Companies Act as an oversea 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.

Rate of tax

The chargeable income of a company, which includes its taxable income and capital gains, is taxed at 35%. A number of entities which are exempt from tax include, inter alia, Cooperative Societies, Collective Investment Schemes consisting of non-prescribed funds, retirement funds or retirement schemes, and organisations of a public character.

Basis of taxation of companies

A company incorporated in Malta is treated as domiciled and resident in Malta and is subject to tax on its worldwide income and capital gains.

A company that is not incorporated in Malta is resident in Malta if its management and control are exercised in Malta. The test of management and control is usually applied by reference to the place where the shareholders’ and directors’ meetings are held and where the company’s important decisions are taken.

Like other taxpayers, 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 Malta, but not capital gains arising outside Malta, received in Malta. The fact that a foreign company has a branch in Malta does not, of itself, constitute residence. A company that is not resident in Malta is taxable on chargeable income and capital gains arising in Malta (unless such income/gains are subject to a specific exemption).

Accounting period

Companies are subject to tax for every year of assessment on the income derived in the financial year ending during the preceding calendar year. However, companies whose accounting date is not the 31 December require the approval of the Commissioner of Inland Revenue in order to adopt their financial year as the basis for taxation. In granting the approval the Commissioner may impose conditions.

Taxable income

The audited financial statements of the company will normally form the basis of the tax computation, but adjustments will be necessary in order to arrive at the company's income chargeable to tax. The general rule is that tax deductions are allowed only with respect to expenses incurred wholly and exclusively in the production of the income but the law contains special rules on various items. 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. Rules on tax deductions are discussed in Chapter 11.

Transactions between a foreign company and a Maltese controlled company should be made at arm's length. There are no other specific transfer pricing rules but inter-company pricing may be scrutinised under the general anti-tax avoidance powers of the Revenue. There are no thin capitalisation rules nor any anti-controlled foreign company legislation.

Group Relief

Trading losses incurred by a company may be surrendered to another company or companies within the same group. Two companies are within the same group for tax purposes if:

- they are both resident in Malta and in no other jurisdiction and
- one is the subsidiary of the other or both are subsidiaries of a third company resident in Malta.

A company is treated as a subsidiary of another if it is owned and controlled, directly or indirectly, as to more than 50% by the other. Ownership and control are tested by reference to the ordinary share capital, voting rights, dividend rights and rights to distributions on liquidation. The surrendering and the claiming company must have financial years that begin and end on the same dates and must have been members of the same group for the full financial year in which the losses were incurred.

Losses may be surrendered within 12 months from the end of the financial year in which they were incurred. Group relief for a particular year may only be claimed with respect to losses incurred in that year but once the losses have been surrendered they are treated as trading losses of the claimant company and can be set off against the income and capital gains of that company or carried forward by it indefinitely. Surrendered losses cannot be surrendered again to another company. Capital losses do not qualify for group relief.

Capital gains exemption on transfers between related companies

No tax is charged on capital gains arising from transfers between two companies that are:

- Either within the same group as defined for group relief purposes (as above),
- Or controlled and beneficially owned directly or indirectly as to more than 50% by the same shareholders.

The exemption is clawed back if the asset is subsequently transferred outside the group. A claw back also occurs in the case of intra-group transfers of immovable property situated in Malta or intra-group transfers of shares in a property company (i.e. a company holding directly or indirectly, immovable property situated in Malta), where the companies involved in the intra-group transfer do not remain within the same group over a period of time set out in the law (currently six years).

Other capital gains exemptions

Replacement of business asset

When a company transfers a business asset that it had owned for at least 3 years and replaces it by another asset within 1 year (used solely for a similar purpose in the business), the transfer is not subject to tax on capital gains. The exemption is clawed back if the new asset, or any other replacing it, is sold without replacement.

Exchange of shares on reorganisation

The exchange of shares on restructuring of holdings upon mergers, demergers, divisions, amalgamations and reorganisation qualifies for exemption from tax on capital gains but the exemption is clawed back upon a subsequent transfer of the shares.

The exemption will apply insofar that the exchange of shares does not produce any change in the individual direct or indirect beneficial owners of the companies involved or in the proportion in the value of each of the companies involved represented by the shares owned beneficially, directly or indirectly, by each such individual.

Corporations and shareholders

Meaning of dividend

“Dividend” includes any distribution made by a company to its shareholders and any amount credited to them in their capacity as shareholders. It also includes bonus shares representing a capitalisation of profits. 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 of the company.

Tax accounts

The taxation of dividends depends, in the first place, on the account out of which the distribution is made. Companies resident in Malta are required for tax purposes to allocate their distributable profits to the “final tax account”, “immovable property account”, “foreign income account”, the “Maltese taxed account” or the “untaxed account”.

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 are accorded 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 derived from a participating holding or from a disposal of such holding
- Rents and any other income derived from investments situated outside Malta
- Trading profits attributable to a permanent establishment situated outside Malta
- Dividends paid out of the foreign income account of another company resident in Malta

Further rules apply in the case of banks and insurance companies.

Distributable profits that are subject to tax but are 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.

The tax treatment of dividends

Distributions out of the final tax account, immovable property account, foreign income account and out of the Maltese taxed account do not attract any further tax. An exception applies in the case of distributions of old profits that had been taxed at the rate of 32.5%, which had applied before 1991. In such a case the company is required to withhold tax at 2.5% but no tax is withheld on distributions to non-resident shareholders. Distributions out of the untaxed account are subject to a withholding tax of 15% but non-resident shareholders are exempt from this withholding tax (subject to the satisfaction of certain rather straightforward conditions).

Distributions out of the untaxed account to a shareholder that is a company resident in Malta are not subject to withholding tax but such distributions are to be allocated to the untaxed account of the shareholder.

A shareholder who is an individual may opt to report or not to report dividends received from Maltese companies in his tax return. The same option is available to companies resident outside Malta. If the dividend is reported it will be taxed (unless it qualifies for an exemption) together with the taxpayer's other income at his applicable rates. The taxable amount is the net dividend grossed up by the withholding tax, if any, and the company tax. The withholding tax and the company tax (unless the distribution of profits is made out of the final tax account) can then be set off against the shareholder's tax liability and any excess credit is refunded.

When the shareholder is a company resident in Malta it will report the dividend in its accounts and tax return. Dividends received from the untaxed account of the paying company are not taxed in the receiving company's hands.

Dividends received from the final tax account, immovable property account, foreign income account and from the Maltese taxed account should not attract any further tax. Such dividends, except for dividends from the final tax account, are grossed up and taxed at the shareholder-company's rate. Any withholding tax, as well as the tax paid on the distributed profits (unless the distribution of profits is made out of the final tax account) by the paying company, is then credited against the shareholder's tax liability and any excess is refunded.

If the company paying the dividend had, as a result of double taxation relief, paid tax at an effective rate of less than the standard company rate, the shareholder will still qualify for a credit at the standard rate but any refund for excess credit will be restricted to the tax actually paid in Malta by the company paying the dividend.

When a company pays a dividend it is required to give a dividend certificate to the shareholders, showing the account out of which the dividend is being paid, the tax paid by the company on the distributed profits, double taxation relief claimed by the company on the distributed profits, tax withheld at source, if any and an analysis of the profits out of which the dividend is paid indicating the year of assessment in which the profits were chargeable to tax.

Shareholders who are exempt from tax do not qualify for a credit for company tax paid on dividends. This limitation does not apply to shareholders who are subject to tax but who do not have chargeable income.

Distributions by International Trading Companies

A company that had International Trading Company (ITC) status was a normal company and subject to the rules applicable to other companies but its activities were restricted to trading activities with non-resident persons outside Malta. The tax rate on dividends paid by an ITC to shareholders that are not resident in Malta, whether corporate or not, is 27.5%. This means that the credit of 35% available to them upon distributions will produce a refund of 7.5%. Furthermore, the non-resident shareholders qualify for a refund equivalent to two-thirds of the tax paid by the ITC in Malta on the distributed profits, thus reducing the overall tax burden of the ITC and its shareholders typically in the region of 4.17%. The same results are obtained when an ITC distributes profits to a company resident in Malta that is wholly owned by non-residents.

As of 1 January 2007 it is no longer possible to set up companies that could have the ITC status. Furthermore, ITCs that existed up to 31 December 2010 no longer qualify as such with effect from 1 January 2011. There was the possibility for ITCs, existing up to 31 December 2010, to opt to convert to the new tax refund system (described in the section below) before 1 January 2011.

Refund mechanism upon profit distributions

Distributions out of the foreign income account and out of the Maltese taxed account to shareholders may trigger refunds to the shareholders of Malta tax suffered on the distributed profits.

The extent of tax refunded depends, inter alia, on the nature and source of income derived by the Maltese company. Depending on the circumstances, the refunds may result in a net post-refund tax leakage in Malta ranging between 0% and 10% as set out below.

Dividends derived from a participating holding

Dividends and capital gains derived from holdings that qualify as participating holdings ("PH"), trigger a refund to the recipients of the dividend of 100% of the Malta tax suffered on the distributed profits. Alternatively, the Maltese company may opt to apply a participation exemption in respect of such income, thereby resulting in an outright exemption from tax on the dividend or capital gain derived from a PH or the disposal of a PH.

A PH includes a holding of 10% or more of the equity shares in a foreign entity or an investment of the equivalent of €1,164,000 or more in a foreign entity that is held for an uninterrupted period of not less than 183 days or that satisfies certain other criteria.

For a holding acquired on or after 1 January 2007 to qualify for the 100% tax refund or the participation exemption, such holding must also satisfy certain anti-abuse provisions (applicable in respect only of dividend income from a PH). Among others the holding in the non-resident entity would satisfy such conditions in the event that the non-resident entity is resident or incorporated in a country or territory, which forms part of the EU or where such non-resident entity is subject to a foreign tax of at least 15%.

Dividends derived from holdings not qualifying as a PH

Other refunds are available to shareholders of Maltese companies (registered in Malta on or after 1 January 2007) following the distribution of profits to the shareholders. The 'standard' refund amounts to six-sevenths of the tax paid in Malta (gross of any double taxation relief claimed in Malta in respect of tax paid outside Malta on taxed profits) – resulting in a net post-refund tax leakage in Malta typically amounting to about 5%. However the law provides for different refunds in the following circumstances:

- In the event that the dividend is paid out of profits that qualify as passive interest or royalties (as defined) or out of profits which were received from a PH which does not satisfy the anti-abuse provisions mentioned above, the above refund is reduced to five-sevenths of the tax paid in Malta (gross of any double taxation relief claimed in Malta in respect of tax paid outside Malta on taxed profits), resulting in a net post-refund tax leakage in Malta typically amounting to about 10%.
- If the dividend is paid out of profits allocated to the foreign income account and in respect of which the company had claimed double taxation relief, the applicable refund should amount to two-thirds of the Malta tax (gross of any credit for actual foreign tax suffered) in respect of those distributable profits.

Profits distributed by a Maltese company out of the immovable property account or the final tax account do not entitle shareholders of such company to tax refunds.

The flat rate foreign tax credit

Companies are entitled to a tax credit for any tax that has been paid outside Malta, including relief for underlying tax (see Chapter 11).

With respect to income allocated to the foreign income account, companies may claim relief under the Flat Rate Foreign Tax Credit method (FRFTC). Under the FRFTC, foreign income is deemed to have suffered foreign tax equivalent to 25% of the income received in Malta and does not require evidence of the foreign tax actually paid. Income allocated to the foreign income account is for this purpose grossed up by 25% and taxed at 35%. The deemed tax (20% of the grossed up amount) is then given as a credit against the company's tax liability. The grossing up is made before any deductions from the foreign income to which the company may be entitled. The credit is limited to 85% of the total tax payable by the company on the income allocated to its foreign income account, before the FRFTC itself but after any other double taxation relief that the company may have claimed.

Branch versus subsidiary

A branch of a foreign company is not taxed as a separate entity. The income of a branch is taxed in the hands of the foreign company at the standard company rate and subject to the normal rules. As a non-resident, the foreign company will be taxed only on income arising in Malta, that is, on the income of the branch. In terms of the rules contained in double taxation treaties, the income of the branch is determined as if it were a separate entity dealing at arm's length with the company.

A subsidiary incorporated in Malta is taxed on its worldwide income but if the subsidiary's activities are limited to the Malta business, its worldwide income will be equivalent to the income that the parent would have derived through a branch. The taxable amount and the tax burden of a subsidiary are therefore normally equal to that of a branch.

The refundable tax system outlined above extends to shareholders of foreign companies which have branches in Malta. Tax paid in Malta by branches on profits attributable to activities performed in Malta should be refunded upon a distribution of profits by the particular foreign company.

A branch could provide certain advantages as its losses may possibly be set off against the company's foreign taxable profits for foreign tax purposes whereas the losses of a subsidiary might not be available for set-off. On the other hand, the rules for the carrying forward of trading losses from year to year under Maltese tax law are clearer for a subsidiary than they are for a branch. 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 certain rather straightforward statutory conditions), and the foreign company will be similarly exempt from tax on any capital gains derived from the disposal of the subsidiary (unless the subsidiary owns immovable property in Malta). When the company's structure requires Maltese tax residence on account, for example, of treaty considerations, this is best obtained through the formation of a subsidiary.

Special industries

Insurance companies

The Income Tax Act contains detailed rules on the determination of the chargeable income of insurance companies. When a non-resident company carries on insurance business in Malta, the tax liability is limited to the profits attributable in accordance with these rules to the Malta business.

In general, the taxable income derived from long term business is the investment income, including interest, capital gains, the surplus resulting in the long term fund and other income not related to that fund, less expenses. The company must withhold tax at 15% from payments to insured Maltese-resident persons on the maturity of their policy.

Gains from the transfer, surrender or maturity of certain linked long-term policies satisfying certain statutory conditions are exempt from tax. Other linked long-term policies satisfying certain statutory conditions are subject to a final withholding tax liability of 15%.

The income from general insurance business includes premiums and all other income and gains. The technical provisions and the equalisation reserve at the beginning of the year are included as income, while the provisions and reserves at the end of the year are allowed as deductions, together with claims paid, losses and other expenses.

Shipping and air transport

Companies incorporated in Malta and owning EU/EEA ships qualify for incentives under the Merchant Shipping Act (see Chapter 3). Subject to the condition of reciprocity non-resident ship-owners are exempt from Maltese tax. Profits of non-residents from the casual calls of ships in Malta are also exempt. The same rules apply to profits derived by non-residents from the business of air transport. Shipping and air transport profits of non-resident companies are usually exempt from Maltese tax also on account of the provisions of the relative double taxation treaties. In the exceptional cases where a non-resident is subject to Maltese tax, the taxable income is restricted to profits attributable to goods and passengers shipped in Malta.

Industrial activities

Companies carrying on industrial activities may qualify for incentives under the Malta Enterprise Act (see Chapter 3).

Chapter 14

Partnerships and other entities

Partnerships and other entities

For the purpose of this Chapter, the term ‘partnership’ refers to those entities which do not fall within the meaning of ‘company’ as defined in the Income Tax Act (see Chapter 123 of the Laws of Malta). Such entities include inter alia:

- A partnership en nom collectif - This is a legal entity that has its obligations guaranteed by the unlimited and joint and several liability of all the partners. Such commercial partnership is formed under and governed by the Maltese Companies Act;
- A partnership en commandite (or limited partnership) the capital of which is not divided into shares – This is another kind of commercial partnership that is specifically regulated by the Companies Act. This entity has its obligations guaranteed by the unlimited and joint and several liability of one or more partners (the general partners) and by the liability, limited to the amount of their contribution, of one or more partners (the limited partners). Partnerships en commandite with capital divided into shares are, for Maltese income tax purposes, treated in the same manner as companies;
- A civil partnership – Civil Partnerships are regulated by the Maltese Civil Code and need not be registered with the Maltese Registrar of Companies. This grants the partners added flexibility and reduces the compliance obligations. However, subject to the rules laid down in the Civil Code, the civil partners are liable with all their assets, present and future, to the creditors with whom they have contracted;
- Bodies of persons constituted or registered outside Malta and which are of a nature similar to the above listed entities.

Income Tax Treatment

The Income Tax Act (‘ITA’) defines ‘partnership’, for the purposes of taxation of capital gains, as follows:

“... a commercial partnership en nom collectif, or commercial partnership en commandite the capital of which is not divided into shares and, ... shall include any other partnership having a legal personality distinct from that of its members other than a commercial partnership en commandite the capital of which is divided into shares;”

Profits derived by the above-listed partnerships or legal entities from a trade or business activity are not brought to charge to tax in the hands of the partnership itself but rather in the hands of the partners in proportion to their respective interest therein. Thus, partnerships and legal entities which are not treated as a ‘company’ for Maltese income tax purposes are not recognised as a separate taxpayer even though they might have a distinct legal personality for company law purposes.

As a general rule, the partnership will still need to be registered for income tax purposes and the partners are required to keep partnership accounts and file a partnership tax return.

The partnership income (or loss) is computed in accordance with the normal rules but it is then deemed to be the income of the partners. The tax is not levied on the partnership as such but directly on the partners at the rates applicable to them respectively and may therefore depend on their residence and other circumstances.

A loss incurred by the partnership is similarly treated as a loss incurred by the partners and may therefore be set off against their other income and carried forward by them, subject to the rules applicable to such losses.

The ITA also brings to charge gains or profits arising from the transfer of the ownership or usufruct of or from the assignment or cessation of any rights over any interest in a partnership.

In this respect, the ITA contains rules to ascertain the acquisition cost for the purpose of determining the gains or profits arising from any transfer of a partnership interest. The determination of such cost depends on a number of factors including the circumstances under which the partnership interest was first acquired.

The transfer value of a partnership should presumably be the higher of market value and the consideration, however, this is not stated specifically in the law.

Exemptions from Tax

Gains on the transfer of a partnership interest are exempt from tax in a number of circumstances, including:

- Assignment of partnership interest between spouses consequent to a judicial or consensual separation, or upon dissolution of the community;
- Donations to spouse, descendants and ascendants in the direct line and their relative spouses, or in the absence of descendants to his brothers and sisters and their descendants, or to approved philanthropic institutions;
- Intra-group transfers and settlement of partnership interest on trust.

Any gains or profits accruing to or derived by any person not resident in Malta on a transfer of any interest in a partnership, which is not a “property partnership”, are also exempt from income tax. The ITA provides a detailed definition of the terms “property partnership”.

Stamp Duty

The Duty on Documents and Transfers Act (DDTA) imposes a stamp duty at the rate of 2% on transfers of a partnership interest. This provision does not apply for transfers in certain foreign partnerships.

A transfer of partnership interest is not deemed to arise for the purposes of DDTA in respect of a partnership share in a civil partnership or in a foreign partnership.

The duty chargeable increases to 5% in cases where 75% or more of the assets, excluding all other current assets other than immovable property, of the partnership in which the interest is being transferred or is deemed to be transferred, consists of immovable property or any right over an immovable; or a partnership, in which an interest is being transferred or is deemed to be transferred holds, directly or indirectly, shares in a company having 75% or more of its assets consisting of immovable property or any rights over an immovable. The provisions applicable to a company in respect of the increase in rate apply in the same manner to a partnership.

Other relevant provisions of the DDTA include that:

- Every transfer inter vivos of an interest in a partnership executed in Malta shall, under pain of nullity, be made in writing;
- Where such transfer is executed outside Malta upon an order given directly in Malta by any person, such person shall give a notice in writing to the Commissioner of such transfer in such manner and in such term as may be prescribed;
- A person to whom an interest in a partnership registered in Malta are transmitted causa mortis shall not later than such term after the happening of the transfer causa mortis as may be prescribed, give notice to the Registrar of Companies.

Article 41B, DDTA states that, “

Conversion of a Commercial Partnership

Where a commercial partnership en nom collectif or a commercial partnership en commandite, the capital of which is not divided into shares is converted into a company, it is deemed that no transfer or acquisition of assets has taken place. Subsequently, for the purpose of determining the chargeable income or gains on a transfer of the said assets by the company, the cost and date of acquisition taken into account are the cost and date of acquisition by the commercial partnership that had been converted.

In a similar manner, the transfer of assets upon a conversion as indicated above does not attract stamp duty.

In the case where a company is converted into a commercial partnership en nom collectif or a commercial partnership en commandite the capital of which is not divided into shares:

- any balance of distributable profits allocated to any of the tax accounts, existing on the day the company ceases to be a company, are deemed to have been distributed by way of dividend on the said day and all relevant provisions apply accordingly to such profits;
- it is deemed that no transfer or acquisition of assets has taken place and subsequently, for the purposes of determining the chargeable income or gains on a transfer of the said assets by the partnership, the cost and date of acquisition taken into account shall be the cost and date as applicable to the company that has been converted;
- the conversion may give rise to a clawback of a previous intra group exemption of transfer of assets
- capital losses available to the company prior to conversion shall be carried forward and set off only against capital gains derived by the partnership;
- trading losses available to the company prior to conversion shall be carried forward and set off against the total income derived by the partnership.

Winding up of Partnership

Both in terms of the ITA and of the DDTA, the distribution of the partnership's assets to its members upon the winding up of a partnership pursuant to a scheme of distribution, is considered to be a "transfer".

However, the ITA definition refers only to distributions by a partnership en nom collectif or a partnership en commandite the capital of which is not divided into shares. On the other hand, the DDTA definition refers to distributions by a partnership to its members i.e. by any partnership.

Joint Ventures and irregular partnerships

The rules outlined above apply also to joint ventures and irregular partnerships, except that in such cases there is usually no obligation to register the body of persons with the Inland Revenue Department and to file a partnership return.

Trusts

A trust exists where a person (called a trustee) holds as owner, or has vested in him, property under an obligation to deal with that property for the benefit of persons (called the beneficiaries) whether or not yet ascertained or in existence, which is not for the benefit only of the trustee, or for a charitable purpose, or for both such benefit and purpose.

The Trusts and Trustees Act (Act XIII of 2004) introduced substantial changes to the Maltese trust legislation in a bid to strengthen Malta's international obligations in respect of non-discrimination, transparency and prevention of money laundering. Trusts formed prior to the coming into force of the Trusts and Trustees Act were granted a transitional period of ten years from the date of their registration within which to become compliant with the new legislation. Until the lapse of the said ten years, such trusts should continue to be taxed at a fixed annual rate of €466.

The Maltese fiscal implications relative to trusts vary depending on a number of circumstances including (i) the particulars of the parties involved (e.g. the residence of the trustees or beneficiaries), (ii) the act or event under review (e.g. the settlement of property, transfer of beneficial interest, distributions of trust assets, etc.) and (iii) the nature of the trust assets.

Furthermore, the Maltese Income Tax Act also contemplates a number of look-through provisions whereby income that is attributable to a trust is deemed to be derived directly by the beneficiaries. The application of such tax transparency provisions is mainly intended so as to allow the application of tax exemptions that would have been available to the beneficiaries if there was no trust relationship.

Anti-avoidance rules

The Commissioner of Inland Revenue has the right to disregard a partnership if he is of the opinion that it was formed for the purpose of fragmenting income and that the partners do not in fact carry on jointly a trade, business, profession or vocation. In such cases, the Commissioner can decide the manner in which the tax liability on the profits is to be borne.

Similarly, the Commissioner may disregard transactions involving a trust where, in his opinion, such transactions are carried out with the sole or main purpose of reducing the amount of the tax payable.

A number of general anti-avoidance provisions applicable to companies are also relevant to partnerships.

Estates

Under Maltese law, the assets of a deceased person devolve immediately and automatically to the heirs. An estate is not a taxpayer but if an estate is administered by an executor and the heirs or their shares are not readily identifiable, the executor is responsible for reporting the income of the estate and paying the tax on behalf of the heirs.

If the heirs subsequently report the income or are otherwise taxed on their share, the tax paid by the executor is available to them as a credit.

Other Legal Entities

The Civil Code provides for the rules governing the registration in Malta of certain types of organisations that are vested with legal personality and which may, in certain limited circumstances, be used for investment purposes. These organisations include, inter alia, foundations and associations.

An organisation is defined as “universality of persons who associate, or universality of things which are appropriated to achieve a lawful purpose having a form recognized by law, and which is capable of being a legal person in terms of law”. Associations relate to universality of persons while foundations to universality of things.

Associations are not bound to register as legal persons but are entitled to do so. Legal personality however depends on registration and an association must, on pain of nullity, be constituted by means of a written agreement. The Second Schedule of the Civil Code lists the contents that the statute must contain. No special rules have yet been issued relating to the tax treatment of associations

Foundations are also constituted in writing (public deed or will) and they may be private or public. The deed of foundation must be registered by the notary with the Registrar of Legal Persons and such registration endows the foundation with legal personality.

A foundation created under foreign law may be recognised as a ‘foundation’ created under Maltese law. The foreign foundation should register with the Registrar for Legal Persons if it carries on an activity in Malta for more than 3 months. Foreign organisations having legal personality under foreign law would be recognised as legal persons for all intents and purposes of Maltese law.

Tax rules seek to extend the scope for using foundations. Foundations are treated in the same manner as companies ordinarily resident and domiciled in Malta, hence the rules pertaining to the taxation of companies apply mutatis mutandis, i.e the applicable tax rate is 35% and tax due is payable in the same manner as applicable to companies; etc.

A foundation thus may elect to be treated as a company or as trust (e.g. for stamp duty purposes).

However, a foundation may elect not to be treated as a company if it is either: enrolled in terms of the Voluntary Organisations Act or established for the achievement of a social purpose AND is non-profit making. In such cases, foundations are, subject to satisfying the relevant conditions, either taxed at marginal rates (15% - 35) or exempt from tax.

Where at least one of the administrators of the foundation is resident in Malta for tax purposes, then tax is payable in Malta on all income or gains earned by the foundation which is chargeable to tax under Maltese law. However, on the basis that the foundation satisfies the applicable conditions, the foundation may be treated as a look-through entity and the income is deemed not to be income attributable to the foundation but income which is derived directly by the beneficiaries and taxable in the hands of such beneficiaries.

Chapter 15

Taxation of Individuals

The tax system applicable to individuals

This Chapter deals with the special provisions and further considerations applicable to the taxation of individuals in addition to the general rules discussed in Chapters 13 and 14.

Basis of taxation of individuals

An individual is subject to tax on his world-wide chargeable income (including capital gains) if he is ordinarily resident and domiciled in Malta. If an individual is not ordinarily resident or not domiciled in Malta, he is subject to tax on chargeable income and capital gains arising in Malta as well as on chargeable income arising outside Malta (but not capital gains) received in Malta. Non-residents are subject to tax on chargeable income and capital gains arising in Malta.

Tax shall not be payable in respect of income arising outside Malta to a temporary resident, that is, any person who is in Malta for some temporary purpose only and not with any intent to establish his residence in Malta and who has not actually resided in Malta for a period equal to six months in a calendar year.

A person is ordinarily resident in Malta if he is regularly resident over a number of years. An ordinary resident ceases to be resident in Malta if he is absent from Malta in circumstances that, in the opinion of the Commissioner of Inland Revenue, are inconsistent with the status of resident. The indications that would be taken into account for this purpose are the duration of the absence and the connections that the individual may have retained with Malta.

Domicile is a term of private international law. An individual usually acquires the domicile of his parents on his birth but he may acquire a domicile of choice in another country if he is present in that country with the intention of remaining there permanently.

Individuals are taxed for every year of assessment on the income derived during the preceding calendar year.

Rates of tax

Individuals are, as a rule, subject to tax at progressive rates. There are different scales of rates for different categories of individuals, as shown in Appendix IV. The maximum rate is 35%.

Taxable income

Taxable capital gains must be reported together with the taxable income and tax is levied on the total amount. Individuals may qualify for certain exemptions, including an exemption from tax on capital gains derived from the sale of property that had been owned and used as the taxpayer's sole ordinary residence for at least three years.

Employment income includes the value of any fringe benefits, determined in accordance with the Fringe Benefits Rules. Any benefit provided by reason of employment by an employer or a related company to an employee or to a member of his family is deemed to constitute a fringe benefit. The use of a company car or a car allowance, the use of company property, the provision of free or subsidised board and lodging and free non-business travel are among the fringe benefits specifically regulated by the Rules.

When a company grants an option to its employees to acquire shares, such share options become taxable when the option is exercised. In this respect, the value of the said share option would be 42.85% of the excess of the price which the shares would fetch in the open market on the date of the exercise of the option over the option price of the same shares, subject to the conditions contained in the said Rules. Any gain realised from the transfer of shares acquired through the exercise of a share option constitutes a capital gain and should be taxable.

A number of specified benefits are exempt under certain conditions, such as health insurance and the use of a computer and related equipment. Employment income (including the value of fringe benefits) is subject to deduction at source under the Final Settlement System. Income derived by individuals from other sources is, in general, determined in accordance with the rules, and qualifies for the deductions, applicable to other taxpayers.

Individuals are as a rule not required to report dividends received from companies resident in Malta. If they opt to report dividends they will be taxed on the amount of the distributed profits gross of any tax and will qualify for a credit of the tax paid by the company in respect of such distributed profits. This credit may result in a refund to the shareholder. Dividends paid out of profits allocated to the Final Tax Account shall not be charged to further tax and shall not form part of the chargeable income of any person. The tax withheld on profits allocated to the Final Tax Account cannot be subject to a credit/refund to the shareholder.

Individuals have the option to receive investment income without withholding tax, in which case they will be required to report the income in their tax returns and be taxed at their personal rates. Investment income that has been subject to the final withholding tax need not be reported. If it is, it will not be subject to further tax and the tax withheld will not be available as a credit.

Individuals may qualify for certain deductions including deductions in respect of alimony paid to an estranged spouse, private school fees, childcare fees, homes for the elderly fees and sports fees. There are no personal allowances, but the tax rates of resident individuals include a tax-free portion in an amount that varies according to whether the individual is taxed as a married or as a single person.

A specimen tax computation for individuals is provided in Appendix V.

Married couples

The income of a married couple living together is treated as the income of one taxpayer but for the purpose of calculating the tax payable the spouses may opt for a separate computation. In a separate computation, the earned income of each spouse is taxed as if it were derived by a single person. The unearned income of both spouses is treated as the income of the spouse with the higher amount of earned income. Under a separate computation, the income of each spouse qualifies for the tax free portion applicable to single taxpayers and is taxed at the single persons' rates. However, the spouses are still required to have one tax registration and to file one tax return. It is up to the married couple to decide who is the responsible spouse for tax purposes but the spouses are jointly and severally liable for their tax obligations and liabilities.

High Net Worth Individuals

An individual qualifying as a High Net Worth Individual under the applicable rules, shall have all foreign sourced income which is remitted to Malta taxed at 15%, having also the possibility of claiming double tax relief on such income. No tax is charged on capital gains arising outside Malta even if remitted to Malta.

In order to qualify for this special status, the applicant must own or rent immovable property in Malta and must not be domiciled or intending to establish a domicile in Malta. The applicant must also be in possession of a health insurance, which covers himself and his dependents and must be deemed to be a fit and proper person. Further obligations arise for Non-EU/EEA/Swiss Nationals, including the requirement to enter into a qualifying contract with the Government of Malta. An individual who has been granted the special tax status must comply with continuing obligations on a yearly basis, including not residing in any other jurisdiction for more than 183 days.

The applicable tax rate of 15% on foreign sourced income remitted to Malta is subject to a minimum annual tax liability of €20,000 with an additional €2,500 for each dependent for EU/EEA/Swiss Nationals. Non-EU/EEA/Swiss Nationals are subject to a minimum annual tax liability of €25,000 with an additional €5,000 for each dependent. Other chargeable income of the beneficiary is charged to tax at the rate of 35%.

An application for the special tax status must be made through the service of a person that qualifies as an "Authorised Person".

The above arrangement replaces the tax rules otherwise applicable to Resident Scheme Certificate holders. However, persons already qualifying under that arrangement continue to qualify under the old rules subject to certain conditions being satisfied.

Highly Qualified Persons

With effect from 1 January 2011, expatriates employed in an 'eligible office' earning income payable from a 'qualifying contract of employment', may opt to be subject to tax on such income at a flat rate of 15%. It is not possible to claim any relief, deduction, reduction, credit or set-off of any kind in the event that a beneficiary applies this reduced rate of tax. The qualifying income will constitute the first part of the person's income, with any remaining income being taxed at the standard rates (up to a maximum of 35%) applicable to such individual.

Employment with companies licensed and/or recognised by the Malta Financial Services Authority (MFSA) or the Lotteries and Gaming Authority (LGA) and consisting of specified senior positions is considered as an 'eligible office'. Income, excluding any fringe benefits, arising from such office must be of a minimum of €75,000 p.a. adjusted annually in line with the Retail Price Index. Any part of the qualifying income which is in excess of €5,000,000 is exempt from tax in Malta.

This arrangement applies for a consecutive period of five years for EU/EEA/Swiss nationals and for a consecutive period of four years in the case of third country nationals. The standard tax rates will apply after the lapse of such periods. Expatriates who held such office up to two years before 1 January 2011 benefit from the 15% tax rate for the remaining years of the scheme with effect from calendar year 2010.

Returned migrants

Persons born in Malta who take up residence in Malta have the option for a special tax regime. The option is open to persons who have been absent from Malta for an aggregate period of not less than 20 years or to persons who are not Maltese nationals and who satisfy certain minimum capital/income levels and remittance conditions. An individual who takes the option is taxed on income and capital gains arising in Malta and on foreign source income which is remitted to Malta even though such individual may be domiciled in Malta. No tax is charged on capital gains arising outside Malta even if remitted to Malta.

A returned migrant availing himself of the option, is taxed at a flat rate of 15% (with a tax free portion) if he has received in Malta at one or more times during the year immediately preceding the year of assessment an amount of income of not less €14,000 arising outside Malta (such minimum remittance is increased by €2,400 for every dependant relative including a spouse) and chargeable to tax subject to a minimum annual tax liability of €2,325 after double taxation relief. If he derives earned income in Malta this would be taxed separately at the standard rates applicable to other residents without a tax free portion.

Foreign employees

Individuals who are not citizens of Malta may be employed in Malta if the employer is in possession of a work permit. On the basis that the foreign employees are not domiciled in Malta they will be taxed on income arising in Malta, which will include their employment income, and any foreign income (but not capital gains) received in Malta.

Their Malta income will include all remuneration for services performed in Malta, including the value of any accommodation provided by the employer and any other fringe benefits. There are no special tax rates for foreign employees. If they satisfy the residence test they will be taxed at the rates applicable to other residents, including the tax-free portion. Otherwise, they will be taxed at the non-residents' rates. The taxation of individuals working in Malta may be subject to the provisions of any applicable double taxation treaty.

Individuals employed outside Malta

Individuals who are subject to tax on their world-wide income may qualify for a special tax rate of 15% on income derived from employment outside Malta. In calculating the tax due, the overseas employment is to be treated as the first part of the income with any residual income being taxed at the applicable standard rates up to a maximum of 35%. This rate applies if the assignment requires the performance of duties wholly or mainly outside Malta and such terms are reflected in the relative contract of employment.

Other considerations

Income of minors is under Maltese law treated, saving certain exceptions, as income of the parents vested with the parental authority and must accordingly be reported together with their other income. Income of minors that is excluded from the parental authority is taxed separately from the income of the parents but the responsibility for the relative tax obligations falls on the parents or, in their absence, the tutor of the particular minor. Under an anti-tax avoidance rule designed to avoid the fragmentation of income, income derived by children as a result of the disposition of a parent may be treated as the income of the parent.

The heirs are jointly and severally liable for the tax on the income of the deceased. Under Maltese law, the estate of a deceased person passes on to his heirs immediately upon death. The income of the estate is therefore the income of the respective heirs. However, if the heirs or their shares are not yet determined the income of the estate may be taxed provisionally in the hands of the executor.

Chapter 16

Indirect Taxation

Indirect taxes in Malta

- Value added tax (VAT) is charged on supplies of goods and services made in Malta, on intra-Community acquisitions of goods made in Malta and on the importation of goods into Malta.
- Imports from outside the EU are also subject to import duty.
- Excise duty is charged on excise goods produced in or imported into Malta.
- A duty on documents and transfers (stamp duty) is levied on a number of transfers and transactions.
- A motor vehicle registration tax is imposed on the registration of every motor vehicle imported into Malta.
- An eco contribution is imposed on certain products that result in waste and which are imported into or produced in Malta.

The inheritance of immovable property situated in Malta and of securities in Maltese companies is subject to stamp duty but otherwise there is no succession or estate tax. There are no local taxes of any kind.

Value Added Tax

Background

VAT was introduced into Malta with effect from 1 January 1995, replaced by a customs and excise tax in July 1997 and re-introduced with effect from 1 January 1999. With effect from 1 May 2004, the date of Malta's accession to the European Union, the Maltese VAT system became fully harmonised with the EU VAT regime, other than where derogations were negotiated and which are included in the Treaty of Accession.

VAT is imposed on importation of goods into Malta, on every intra-Community acquisition into Malta and on every supply of goods and services made in Malta for a consideration in the course of business. VAT is charged at a standard rate of 18% but a reduced rate of 5% is charged in respect of certain supplies. These include the supply of electricity, certain confectionery items, certain medical accessories, printed matter, the importation of certain items for the exclusive use of the disabled, domestic care services, works of art, collectors' items and antiques, certain labour intensive services and admission to museums, art exhibitions, concerts and theatres. The supply of accommodation in hotels and holiday premises is subject to a reduced rate of 7%.

VAT on imports

VAT is imposed at the rate of 18% (and at 5% in respect of the goods subject to a reduced rate of VAT mentioned in the preceding paragraph) of the taxable value of the goods that are not in free circulation in the EU and that are imported into Malta. It is collected by the Comptroller of Customs on behalf of the Commissioner of VAT at the time of the release of the goods together with any duties payable on the imports. A number of importations are exempt from VAT (see below).

VAT on Intra-Community acquisitions

When a person who has an obligation to register for Maltese VAT purposes (see below “Registration for VAT”) makes an intra-Community acquisition in Malta, i.e. he receives a supply of goods from a person who is registered in another EU State where such goods are transported from one EU State to another, he will be liable for the payment of VAT in Malta on that transaction, unless the goods are exempt from VAT.

Acquisition VAT is also imposed on any other person (other than a private individual) who makes an intra-Community acquisition of goods with a value exceeding Eur10,000. Such persons may also opt to account for and pay such VAT if their intra-Community acquisitions do not exceed this amount.

VAT on supplies of goods and services

VAT is charged on the taxable value of goods and services supplied in Malta other than exempt and zero-rated supplies. A supply of goods is deemed to take place in Malta if the goods are situated in Malta at the time of the supply. With effect from 1 January 2010, in the case of supplies of services, the general rule is that a supply of services to taxable persons (business to business transactions) is deemed to take place where the customer is established whilst a supply of services to a non-taxable person (business to customer transactions) is deemed to take place where the supplier is established. Certain conditions and exceptions apply.

Certain services, particularly in the case of business to customer transactions, are regulated by special rules – for example, intellectual services, including advertising, consultancy, banking and financial services, are as taking place in the country where the customer is established if the customer is a non-taxable person established outside the Community.

The taxable value is usually the price charged for the supply. Free supplies of business goods and the private use of business goods may be treated as supplies made for the price that would normally be charged for those goods.

VAT charged on intra-Community acquisitions of goods and on supplies of goods and services (output VAT) becomes due at the time when the supply takes place and must be paid by the supplier to the Commissioner of VAT at the time when furnishing his VAT return. VAT on imports falls due at the time when the import takes place and is payable to the Comptroller of Customs on behalf of the Commissioner of VAT before the imported goods are released from customs.

Input VAT and input VAT credit

VAT incurred by a registered person on imports, intra-Community acquisitions and local purchases (inputs) made in the course of business is the input VAT of that person. Input VAT is recoverable to the extent that such inputs are used for supplies made or to be made in the course of business (outputs). Input VAT is recovered by means of a credit against the output VAT. Excess credits are refundable. VAT is charged at every stage of the distribution chain but the input tax credit mechanism ensures that the effective tax is only imposed on the price charged to the final consumer. VAT is therefore, as a rule, neutral to the business.

The right to an input tax credit arises when the import, intra-Community acquisition or local purchase is made for the purpose of taxable supplies, of certain supplies made outside Malta or of zero-rated supplies. The claim for the credit is made in the tax return for the corresponding period. VAT is not recoverable if it is “blocked” or if it is incurred for the purpose of activities that are exempt without credit, or if it is incurred by an exempt small business. In such cases VAT is a cost of the business.

Supplies outside Malta

Supplies made outside Malta are not subject to VAT. However when these are supplies that would be taxable or zero-rated if made in Malta, they carry the right to input VAT credits. Furthermore, certain supplies relating to banking and insurance, that are considered to be exempt without credit (see below) when supplied in Malta, carry a right of input VAT recovery when supplied to customers established outside the EU or are export related.

Blocked VAT

Another instance when input VAT is not recoverable is when it is ‘blocked’. ‘Blocked’ input VAT includes VAT incurred on the purchase (other than for the purposes of resale) of tobacco, alcohol, works of art and antiques, purchases or leasing of non commercial motor vehicles, vessels or aircraft, entertainment and hospitality and the provision of transport to employees.

Exemptions

An exemption from VAT may arise either by reason of the type of import, acquisition or supply or by reason of the exempt status of the supplier (see below ‘Exempt persons’)

Exempt importations

Exempt importations include:

- goods that are intended to be placed under a customs duty suspension regime
- re-imported goods which are re-imported unaltered

Exempt intra-Community Acquisitions

Exempt intra-Community acquisitions include:

- acquisitions of goods whose supply or importation is exempt
- acquisitions that are part of certain triangular transactions

Zero-rated supplies

Certain supplies are zero-rated. This means that although no VAT is chargeable on them, they are treated for the purpose of input VAT credits as if they were taxable supplies and they therefore also carry the right to VAT credits. They are consequently referred to in Maltese law as exempt with credit supplies. Exempt with credit supplies include:

- exports and export-related services
- the transfer of goods placed or while they are placed under a customs duty suspension regime
- international transport of persons
- the supply and repair of commercial aircraft and vessels
- food (excluding confectionery and food supplied in the course of catering)
- pharmaceuticals
- intra-Community supplies of goods to persons registered for VAT purposes in another EU state.

Exemptions without credit

Other exemptions are termed exemptions without credit. When the activity of the business consists of or includes exempt without credit supplies, the input tax relating to those supplies is not recoverable. Special rules apply to determine which part of the input tax of the business relates to taxable and to exempt supplies. Exempt without credit supplies include:

- the transfer and the letting of immovable property (excluding inter alia commercial letting and hotel accommodation)
- insurance services
- credit, banking and certain investment services
- lotto and lotteries including remote gaming
- health and welfare
- cultural services (as may be approved)
- education.

Exempt persons

A business whose annual turnover is less than the applicable statutory thresholds qualifies for the small business exemption and is entitled to be registered as an 'exempt person'. An exempt person does not charge VAT on supplies made but may not deduct input VAT. Such person is still however required to register with the VAT authorities and submit periodic declarations unless the person's annual turnover does not exceed €7,000 .

Registration as an exempt person is optional. Small businesses that do not take up this option or who opt out of the exemption are registered as a regular business: they charge VAT on their supplies and qualify for input VAT credits on the lines indicated above.

Registration for VAT

The effects of registration are basically the obligation to account for and pay VAT and the right to claim input VAT credits. A person who is established in Malta is required to register for VAT within 30 days from the date when he makes a taxable or exempt with credit supply. In the case of businesses established outside Malta the obligation to register arises if they make taxable supplies in Malta for which they are liable to pay the VAT. Persons may apply for registration even if they do not make taxable/exempt with credit supplies (but intend to do so), but registration in such cases is subject to certain conditions .

With effect from 1 January 2010, taxable persons who are not registered for VAT in Malta and who supply services within the territory of another Member State for which the tax is payable solely by the recipient of the service are required to register for VAT by not later than thirty days from the date on which they provide such services.

Other persons (other than private individuals) are also required to register for Maltese VAT purposes when they make intra-Community acquisitions with a value exceeding Eur10,000 per annum. Furthermore, persons who are not established in Malta and who make distance sales to Malta with a value exceeding Eur35,000 per annum are also obliged to register for Maltese VAT purposes. In both cases, such persons have an option to register for VAT even if they do not exceed the respective thresholds.

With effect from 1 January 2010, a taxable person established in Malta (unless already registered for VAT) who receives services from outside Malta for which he is liable for the payment of the VAT in Malta, is required to register for VAT by not later than the date on which he receives such services.

Tax periods, returns

The tax period for VAT is typically 3 months. Exempt persons and taxable small businesses qualify for a 12-month tax period. Exporters and other businesses that are regularly entitled to VAT refunds may qualify for 1-month tax periods. Registered persons must furnish a tax return for each tax period and, except for exempt persons, must pay the relevant output VAT, if any, due for that tax period. The tax return and the tax payment fall due within six weeks after the end of the relative tax period. Late payments of tax are subject to interest at 0.75% per month.

Tax invoices and records

Where a registered person makes a supply, other than an exempt without credit supply, to another person who provides his valid VAT identification number must issue a tax invoice to that other person - the tax invoice is the basic VAT document since it is the basis on which the purchaser may claim an input tax credit on a supply and provides the VAT authorities with an audit trail.

In all other situations, other than when an exempt without credit supply is made, an approved fiscal receipt must be issued on every supply.

In addition to normal accounting records, registered persons are also required to keep a VAT account that must indicate the total input tax and the total output tax for each tax period together with a cross reference to the accounting entries for the transactions on which the tax had been charged.

Administration

The Administration of VAT is vested in the Commissioner of VAT. Powers and duties include furnishing information to the Commissioner of Inland Revenue and the Comptroller of Customs, access to property, and inspection of records and documents. The Commissioner is empowered to carry out inspections on businesses, to raise assessments and to impose administrative penalties. Taxpayers may appeal against assessments to the Administrative Revenue Tribunal (Fiscal Matters) and appeal from decisions of the Tribunal, on points of law, to the Court of Appeal.

Import duties

Imports from non-EU countries are subject to import duty at various rates according to the type of product (as defined by H.S. Code) imported. Import duties are administered by the Comptroller of Customs. The law provides for a number of exemptions, including exemptions on temporary importations (see also Chapter 7).

Excise duty

Excise duty is levied on excise goods produced in or imported into Malta. Excise goods fall under three headings: manufactured tobacco, energy products including mineral oils (but excluding gas supplied through a natural gas system) and alcohol and alcoholic beverages. An excise duty is also levied on mobile telephony services. Excise duty is administered by the Comptroller of Customs.

Oil bunkering tax

A flat rate of tax per metric ton is charged on the bunkering of certain fuel oils used for ships and their machinery and supplied free from customs and other duties. The payment of the tax is due immediately upon the release of the fuel from the bonded installation, marine terminal or marine facility on the quantity of fuel measured or calculated by Customs as having been released.

Motor vehicle registration tax

Motor vehicles are taxed upon their first registration in Malta. The rates vary with the amount of CO2 emissions, particulate matter, age and value of the particular car.

Eco contribution

An eco-contribution is payable on certain products which result in waste and which are imported in or produced in Malta. The contribution, which is calculated at varying rates and amounts depending on the type of product is payable by the importer or producer of such products. Eco contribution is administered by the Commissioner of VAT.

Duty on documents and transfers (stamp duty)

A duty is levied on documents relating particularly to transfers of property, marketable securities (including shares), insurance policies, and auction sales. Some applicable rates are shown in Appendix VI.

A number of limitations and exemptions apply, including an exemption from duty on transfers of immovable property between companies forming part of the same group, transfers of shares upon certain restructuring of holdings within a group of companies and a reduced rate of duty on the acquisition of property to be used as one's ordinary residence.

Wealth and capital taxes

No taxes are levied on net wealth as such. In the case of corporations, no tax is levied on the basis of the capital of the business, but an annual registration fee, which may reach a maximum of Euro1,400 (paper submission) or Euro1,200 (electronic submission), is charged by reference to the company's authorised share capital.

Betting and lotteries

Winnings are not subject to tax, but a gaming tax is chargeable on licensed entities. The amount and calculation of the tax depends on the type of licence held and where this is calculated by reference to the entity's betting results, it is capped at Eur466,000. Betting and lotteries are strictly regulated.

Local taxes

There are no local taxes of any kind.

Licensing fees

Annual licensing fees are imposed on a wide variety of activities, such as trading licences, the road licence and licenses to keep firearms.

Chapter 17

Tax Treaties

Tax treaty policy

Since the mid-seventies Malta has sought to expand its tax treaty network. Most of Malta's treaties are based on the OECD model although some treaties (particularly older ones) contain some material variations therefrom. Some of them include special tax incentives for foreign enterprises setting up manufacturing establishments in Malta. These consist typically in low tax rates on dividends arising in Malta supported by tax sparing provisions. Malta's economic development, and particularly the growth in its financial services sector, expanded the scope for tax treaties and in fact currently Malta has almost 60 double taxation agreements with almost all the important OECD countries. The current list of tax treaties is given in Appendix VII.

A tax treaty concluded by Malta becomes law by Ministerial order and the provisions arising therefrom apply notwithstanding any provisions to the contrary under Maltese domestic tax law. However, under the rule that treaties do not impose a tax liability, non-residents qualify for certain benefits under Maltese domestic law (see Chapters 13 and 14), particularly exemptions from withholding taxes, that are normally more favourable than the respective treaty rules.

Withholding taxes

The typical treaty rate on dividends paid by Maltese companies is the company rate of tax, which stands at 35%. This rate is however charged under Malta's full imputation system, which means that the shareholder qualifies for a credit in respect of the tax paid by the company. Company profits are therefore taxed only once and no further tax is effectively payable by the shareholder on distributions (see Chapter 13 – Taxation of companies and shareholders). Maltese law provides expressly that no tax is to be withheld on dividends paid to non-residents satisfying certain straightforward conditions.

Certain treaties entitle non-resident shareholders to a 15% rate on dividends paid by Maltese companies that qualify for benefits under industrial incentive legislation. This means that if the company has paid Maltese tax on the distributed profits at a rate exceeding 15%, the credit to the shareholder under the full imputation system would result in a refund. The treaty would usually protect this benefit by tax sparing provisions. However, the tax levied on the companies under the Income Tax Act in such situations will be directly limited to 15% as if the treaty rate applied to the company profits. Rather than a refund on the payment of dividends the investors can therefore qualify for the reduced rate at the company level at the time that the profits are derived and without any obligation to distribute the profits to benefit from the reduced tax rate.

Maltese domestic law also provides that no tax is payable by non-residents on interest and royalties arising in Malta, subject to certain conditions (see Chapter 11) and this rule overrides the treaty provision on withholding taxes on these categories of income. Similarly no tax is payable by non-residents on capital gains arising on transfers of company shares or securities except where such gains are derived from the transfer of shares or securities in companies whose assets consist wholly or principally of immovable property situated in Malta.

Elimination of double taxation

Treaty relief is one of the forms of double taxation relief available to Maltese residents and is granted under the ordinary credit method (see Chapter 11). Where treaty relief is not available, a taxpayer may, subject to certain conditions, qualify for relief under provisions granting unilateral relief for foreign tax incurred on income arising outside Malta.

Persons deriving dividends from non-Maltese-resident companies can, subject to satisfying the applicable conditions, in addition to relief for the tax on the dividends, claim relief for underlying tax even if such relief is not provided for in the treaty.

A participation exemption can also be availed of in respect of dividends derived from equity holdings in non-Maltese-resident companies/ limited partnerships and gains on disposals thereof which fulfil the conditions set out in the relevant provisions of Maltese tax law.

Companies may, subject to certain conditions, claim double taxation relief under the flat rate foreign tax credit method instead of the other forms of double taxation relief (see chapter 13). This can prove particularly beneficial when the foreign income has been exempt from tax or taxed at a reduced rate.

Appendices

Appendix I

Qualifying companies for the purposes of Investment Tax Credits in terms of Subsidiary Legislation under the Malta Enterprise Act

Companies whose undertaking in Malta consists solely of any one or more of the following activities:

(a) Manufacturing

- (i) the production, manufacture, improvement, assembly, preservation, processing of any goods, materials, commodities, equipment, plant, machinery;
- (ii) the rendering of any industrial services analogous to the activities referred to in (i);
- (iii) the repair, overhaul or maintenance of pleasure crafts, yachts not having more than thirty berths, aircraft, engines or equipment incorporated or used in such vessels or aircraft;

(b) Information and Communication Technology

Information and Communication Technology (I.C.T.) developmental activities, software development, Information Technology (IT) enabled services including call centres and IT solutions as may be prescribed, excluding gaming companies and telecommunications service providers;

(c) Research and development and Innovation

Research and development, and innovative start-ups including enterprises engaged in the design and development of goods or the development of production processes or methods;

(d) Eco-innovation, waste treatment and environmental solutions

“Eco-innovation” means an innovation resulting in significant and demonstrable progress towards the goal of sustainable development, through reducing impacts on the environment or achieving a more efficient and responsible use of resources, including energy;

“Waste treatment” means physical, thermal chemical or biological processes, including sorting, which change the characteristics of the waste in order to reduce its volume or hazardous nature, facilitate its handling or enhance recovery, and shall include waste management;

“Environmental Solutions” means any solutions implemented to prevent or reduce the environmental impacts of an activity, or a product at any stage of its life cycle;

(e) Biotechnology

Biotechnology comprising the production or development of intellectual property or goods or the rendering of services resulting from, or related to, the study, research, discovery, application, modification or development of living organisms or materials derived from them;

(f) Facilities for Filming and Audiovisual productions

- (i) the production of audio visual productions consisting of feature films, television films, advertisements and documentaries as may be approved.
- (ii) the provision of film studio and film sets, editing facilities and filming equipment required in the production of feature films, television films, advertisements and documentaries as may be approved.

(g) Provision of Tertiary Education in the fields of ‘science and technology’

Companies providing recognised degrees in applied sciences as required by industry, as may be approved by Malta Enterprise.

(h) Provision of private health care services

The provision of private health-care services through the setting up of new projects carrying out an investment of not less than 2.5 million Euro in medical equipment, excluding any investment in land or buildings.

(i) Logistics operations by large undertakings

The provision of logistics services that include part-transformation that adds value by undertakings employing not less than 250 full-time employees. The project is required to create more than 50 new jobs (full-time equivalent).

(j) Freeport activities

Activities set out in Article 11 of the Malta Freeports Act and carried on mainly in a freeport as defined by that Act by an undertaking licensed under that Act.

Appendix II

Capital Allowances

Capital allowances under the Income Tax Act

Industrial buildings and structures (including hotels)

Initial deduction (only when acquired new) 10% Annual wear and tear allowance 2%

Plant and machinery

Annual wear and tear allowance

Computers & electronic equipment, computer software	25%
Motor vehicles, other machinery	20%
Air-conditioners, communication and broadcasting equipment,	16.67%
Catering equipment, equipment used for construction of buildings	
and excavation, equipment mainly designed or used for the	
production of water or electricity, medical equipment	
Furniture, fixtures, fittings and soft furnishings, ships and vessels,	10%
lifts and escalators, other plant	
Aircraft	8.33%
Electrical and plumbing installations and sanitary fittings	6.67%
Cable and pipeline infrastructure	5%
Notes	
1, 2. All wear and tear allowances are computed on the straight line method. The allowance in respect of non-commercial motor vehicles is limited to €14,000	

3. Full allowance is granted in the year of acquisition and no allowance is granted in the year of disposal

4. Allowances are granted up to a total of 100% of the cost

5. On the disposal of the asset a balancing statement must be drawn up. If the disposal value is less than the tax written down value the difference is allowed as a further allowance (balancing allowance). If the disposal value is higher than the tax written down value the difference is treated as taxable income (balancing charge). When the asset is replaced, and if the taxpayer so elects, the balancing charge is not taxed as income but deducted from the cost of the new asset

6. Different rates and rules apply for oil and shipping companies

Investment allowance under the Business Promotion Act

Industrial buildings and structures (including warehouses) 20%

Plant and machinery first used in Malta 50%

Note

The investment allowance is a one-time allowance granted over and above full capital allowances due under the Income Tax Act and is not clawed back on the disposal of the asset.

Appendix III

Corporate Tax Calculation

	€	€
Profit before tax per accounts		100,050
Add back:		
Depreciation	40,000	
Disallowed items:		
Provision for bad debts	2,000	
Non qualifying charitable contributions	5,000	
Entertaining expenses (portion)	<u>2,000</u>	<u>49,000</u>
		149,050
Grossing up of company tax on dividend received from Maltese company reported net (€650) in the accounts	350	
Grossing up of foreign tax on foreign business income reported net (€2,400) in the accounts	1,600	1,950
		151,000
Deduct:		
Capital allowances for the year	26,000	
Unabsorbed capital allowances b/f	<u>43,000</u>	<u>69,000</u>
		82,000
Trade loss brought forward		12,000
Total chargeable income		<u>70,000</u>
Tax on total income at 35%		24,500
Deduct—Double taxation relief (Note)		<u>1,400</u>
Net tax liability		23,100
Payments:		
Credit on grossed up dividend	350	
Provisional tax	<u>19,000</u>	<u>19,350</u>
Tax payable		<u><u>3,750</u></u>

Note: Double taxation relief on business income of €4,000, which was taxed in a treaty country at 40%. Relief is restricted to the Malta rate of 35%

Appendix IV

Individual tax rates

	Taxable income € (Euro)	Tax rate on band
Resident married couples opting for joint computation	0 – 11,900	0%
	11,901 – 21,200	15%
	21,201 – 28,700	25%
	Over 28,700	35%
Resident single persons & resident married couples opting for separate computation	0 – 8,500	0%
	8,501 – 14,500	15%
	14,501 – 19,500	25%
	Over 19,500	35%
Non-residents (married or single)	0 – 700	0%
	701 – 3,100	20%
	3,101 – 7,800	30%
	Over 7,801	35%
Returned migrants' scheme	First €5,900 Married First €4,200 Single	0%
	Excess Subject to an annual minimum tax liability of €2,325 after double taxation relief	15%
High Net Worth Individuals	Subject to an annual minimum tax liability of €20,000 (EU/EEA/Swiss Nationals) or €25,000 (Non-EU/EEA/Swiss Nationals) after double taxation relief	15%
Residence permit holders' scheme	Subject to an annual minimum tax liability of €4,193 after double taxation relief	15%
Highly Qualified Persons	Subject to an annual minimum income of €75,000	15%
Special rates for individuals employed outside Malta	Flat rate 15% Excluding any service on board a ship, aircraft or road vehicle owned, chartered or leased by a Maltese company and any service for the Government of Malta. The amount is reduced proportionately when the work outside Malta is not performed for the whole year	

Appendix V

Individual tax calculation

	€	€
Net trading income		25,000
Less—Loss brought forward		<u>3,000</u>
		22,000
Add:		
Salary from family company	5,000	
Fringe benefits	500	
Property rental income	2,000	
Gross foreign dividends (subject to tax at 25% in the foreign country;)	400	7,900
	<u> </u>	<u> </u>
		29,900
Deduct:		
Rental income expenses:		
Interest paid on loan to acquire property	500	
Ground rent	300	
Further deduction on property income (at 20% on 2,000 – 300)	340	1,140
	<u> </u>	<u> </u>
Taxable income		28,760
Tax charge (assuming individual is not married)		<u>5,390</u>
Discharge of tax liability		
Provisional tax payments during the year	2,000	
Double taxation relief on foreign income granted at 18.74% which is the lower of the foreign tax rate (25%) and the effective Maltese tax rate (18.74%).	75	2,075
		<u> </u>
Tax payable on the submission of the return		3,315

Appendix VI

Duty on Documents and Transfer Act - Rates of Duty

Type of transfer	Duty payable
Transfer and inheritance of immovable property, rights over immovable property	5%
Transfer of shares in property companies	5%
Transfer of other shares	2%
Emphyteutical grants	From 12% to 100% of the annual ground rent, depending on the duration of the grant
Life insurance policies	0.1% of the sum assured
Other insurance policies	10% of the premium
Auction sales	2.6%
Credit sales	Euro16.31 per annum

Appendix VII

Tax Treaties in force as at 31 August 2011

Country	Operative from year of assessment	Country	Operative from year of assessment
Albania	2002	Latvia	2002
Australia	1987	Lebanon	2002
Austria	1978	Libya	1974
Barbados	2004	Lithuania	2006
Belgium	1977	Luxembourg	1997
Bulgaria	1989	Malaysia	2002
Canada	1988	Montenegro	2011
China, P.R.	1996	Morocco	2009
Croatia	2001	Netherlands	1977
Cyprus	1995	Norway	1979
Czech Republic	1999	Pakistan	1975
Denmark	2000	Poland	1996
Egypt	2003	Portugal	2004
Estonia	2005	Qatar	2011
Finland	1978	Romania	1998
France	1980	San Marino	2007
Germany	1974	Serbia	2012
Georgia	2011	Singapore	2010
Greece	2010	Slovakia	2002
Hungary	1994	Slovenia	2005
Iceland	2008	South Africa	1999
India	1997	Spain	2008
Ireland	2011	Sweden	1978
Isle of Man	2012	Switzerland	*
Italy	1977	Syrian Arab Rep.	2002
Jersey	2012	Tunisia	2003
Jordan	2012	UAE	2009
Korea, Republic of	2000	United Kingdom	1962
Kuwait	2003	United States of America	2012

*Limited to international air and shipping traffic – a fully treaty has been signed and awaiting ratification.

Tax treaties initialled/signed but not yet in force – as at 31 August 2011

- Bahrain
- Oman
- Saudi Arabia
- Turkey
- Bosnia & Herzegovina
- Russia
- Thailand
- Ukraine

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