
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.