
Chapter 12

Tax Administration

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

- The Inland Revenue Department for income tax and stamp duty
- The Value Added Tax Department for value added tax and eco contribution
- The Customs Department for import duty and excise tax

These departments are headed by the Commissioner for Revenue. The collection of value added tax on importations is administered by the Comptroller of Customs acting on behalf of the Commissioner for Revenue. The Commissioner for 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 for 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 for 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 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 shall in no case be more than 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 for 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
- profits distributed by a non-resident company to a Maltese resident individual derived from shares in such company when each share is considered a qualifying asset in terms of Maltese legislation and when the payment is made through an authorised financial intermediary
- the amount of the net dividend paid by a company registered in Malta in respect of which the recipient shareholder is registered for tax refund in terms of Maltese tax law
- the amount of tax refund received by the recipient shareholder following a distribution of profits by a company registered in Malta
- the share of net profits of a Maltese registered company that a recipient shareholder is beneficially entitled to receive from such company when such individual is registered for tax refund purposes or when he is beneficially entitled, directly or indirectly, to the profits of a person or entity which is so registered
- the share of profits that the recipient shareholder is directly or indirectly beneficially entitled to (whether or not distributed) relation to income or gains derived by a Maltese registered company which was exempt from Maltese income tax through the application of the participation exemption
- the share of profits, which a recipient shareholder is directly or indirectly entitled to receive, from an entity registered for tax refund purpose of the tax refund it would have received following a dividend distribution from a company registered 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. In the event that the investment income was subject to withholding tax, a resident individual may still declare the investment income on his tax return and calculate any tax due as if the investment income was not subject to such withholding tax. Any tax withheld shall be available as a credit against the individual's tax liability, or as a refund, as the case may be. No tax withheld may be claimed back if more than two years have elapsed from the end of the year in which the tax was withheld.

With respect to other recipients (except for resident individuals), withholding tax shall be final and not be available as a credit against the tax liability of the person receiving the investment income mentioned above.

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 withholding tax on rental income on Housing Authority subsidised rent

Subject to the satisfaction of certain conditions, rental income received by a person owning immovable property from a person receiving rent subsidy under any scheme administered by the Housing Authority should be taxable at the rate of 10% of the gross rental income received.

The withheld tax shall be final and not be available as a credit against the tax liability of the property owner or refundable to him in any way.

The Housing Authority shall deduct the tax from the rent subsidy payable to the tenant.

Final withholding tax on rental income from restored property

Subject to the satisfaction of certain conditions, rental income received by a person owning immovable property which has been restored in accordance with a scheme issued for this purpose by the Malta Environment and Planning Authority, the tax chargeable on such income shall be at the rate of 10% of the gross rental income received where the rent is for a residential purpose, and at the rate of 15% of the gross rental income received where the rent is for a commercial purpose.

The withheld tax shall be final and not be available as a credit against the tax liability of the person receiving the rent or refundable to him in any way.

The tax shall be remitted to the Commissioner, together with the necessary documents by not later than the 30th June of the year following that to which the income refers.

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 for 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.

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.

Payments to foreign employees

Employers are bound to give the Commissioner for 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 for 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.