Chapter 4

Foreign Direct Investment

Economic Indicators

During 2010, Malta has managed to attract €792 million worth of foreign direct investment ("FDI") mainly from the financial services industry. At the end of December 2010 the stock position of Foreign Direct Investment in Malta stood at €12.4 billion.

At the end of 2011, FDI stood at €12.5 billion. EU states remained the largest contributors of FDI in Malta, with €8.9 billion, or 71 % of total FDI.

In 2011, the main contributors, accounting for 85.2% of total increases in FDI net inflows, were enterprises active in finance, insurance and manufacturing activities.

Inward FDI flows in the manufacturing industry have increased in 2011 by a net €94.6M when compared to the same period in 2010. This inflow of FDI in manufacturing is the best result Malta has obtained in manufacturing sector since 2004.

In addition, the total stock of FDI in manufacturing during the first six months of 2011 experienced a jump of 15% when compared to the corresponding period in 2010. At almost €803M , the total FDI stock is the highest recorded level since 2007.

Critical success factors

i. International Tax System

- No 'thin-capitalisation' rules and 'controlled-foreign-company' (CFC) legislation.
- Transfer pricing: very flexible.
- No withholding taxes on dividends, interest, and royalties paid to non-residents.
- No net worth tax or similar taxes on capital.
- Tax losses may be carried forward indefinitely.
- Full imputation system since 1948.
- Attractive tax refund regime - apart from the tax refund resulting from the full imputation system, recipients of dividends paid out of profits taxed in Malta may be entitled to a full or partial refund of the tax paid by the distributing company reducing Maltese tax leakage to between 0% and 6.25% in most cases.
- Tax only payable at the earlier of 18 months after year-end, or when a dividend is paid in the case of companies having more than 90% of their business interests situated outside Malta.
- Advanced tax rulings available on international tax issues.
- Stamp duty exemptions for companies which have more than 90% of their business interests outside of Malta.
- No exchange controls (abolished since 2004).
- Provisions of the EU Parent–Subsidiary Directive and Interest & Royalties Directive also applicable.
- Possibility of "flighting" companies to and from Malta.
- Attractive tax regimes for international trading and international holding activities (e.g. participation exemption).
- Capital gains on transfers of shares in Maltese companies by non-residents are normally exempt.

ii. Company administration requirements

- 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.
- Low minimum capital requirements (€1,165).
- Low incorporation and authorised capital fees.
- No Maltese shareholders or directors required.
- Choice of accounting year-end.

iii. International relations

- Bilateral investment 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.
- Double taxation agreements
- Malta has an extensive double tax treaty network spanning over 50 countries: aggressive policy of expansion. Refer also to Chapter 17.

iv. Robust legislative framework

- 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.
- Malta's regulatory framework (banking, insurance, funds and other financial services) necessarily adheres to the EU regulatory framework – thus, Maltese regulated entities are not required to obtain separate licences in other EU Member States in order to offer their services in those states.
- IFRS's are the national recognized accounting reporting standards with all major international accounting firms represented on the island.

v. Enterprise support measures

- In 2011, a total of 42 projects were approved by the Malta Enterprise board. 26 were new projects and 16 were expansions. The projects are envisaged to carry an investment of €167.4M and create 960 new jobs within three years.
- In the first six months of 2012, Malta Enterprise Corporation approved just over 20 investment projects in the area of manufacturing and other sectors – an investment of €13M which is expected to generate 225 new jobs in the first three years of operation.

- The incentives available under the Malta Enterprise Act may be subdivided into six:
    i. 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.
    ii. Investment aid - Enterprises engaged in specific activities can benefit from tax credits on capital investment and job creation.
    iii. SME development - Grants targeting the creation and development of innovative start-ups and the development of forward-looking SMEs.
    iv. R&D and other innovation programmes - Various incentives are offered to stimulate innovative enterprises to engage in research and development.
    v. Enterprise support - Assistance and support to businesses helping them develop their international competitiveness, improving their processes and networking with other businesses.
    vi. 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.
    vi. Other success factors
- High levels of productivity helping profitability of investment.
- 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 ranked 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.
- 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.
- Economic, political and social stability :
    i. Malta has a stable economy, international credit rating agencies rate Malta highly and the World Markets Research Centre has rated Negligible Overall Risks.
    ii. Malta still enjoys an 'A/A-1' Sovereign Credit Rating by Standard's and Poor's whereby Malta's economy is considered to have weathered the global economic crisis relatively well. Moody also reaffirmed the 'A/A-1' long- and short-term sovereign credit ratings.

- 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. In its World Risk Report 2011, the UN Institute for Environment and Human Security: ranked Malta as 2nd safest country worldwide.
- 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 neighbouring countries both to the north and south of the island sets Malta in a prominent position to achieve objectives.

International tax measures

a) 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.

b) Intellectual Property

Subject to the satisfaction of certain conditions, income from qualifying intellectual property qualifies for an outright exemption to Maltese tax. Whilst the exemption is not automatic, it is 'optional' and applies equally to both income streams of a 'trading' and 'non-trading' nature. Where a company is earning the particular income, the exemption applies also on distributions of such income made all the way up to the ultimate shareholders

Up to 2011, such exemption was only applicable on income from patents in respect of inventions (as specifically defined). As from 1 January 2011, the exemption was also extended to income derived from certain copyrights on books, film scripts, music and art.
Maltese income tax law allows for the efficient routing of royalties through Maltese Intellectual Property Holding Companies (IP Holding Companies). A Maltese IP Holding Company is generally formed with the objective of channelling royalties and other income from intellectual property in a tax-efficient manner.

c) Aviation

The enactment of the Aircraft Registration Act on 1 October 2010 complements the success of already existing aircraft maintenance operations in Malta and continues to enhance the country's profile in the aviation industry and the growth of a cluster of aviation services relating to finance, leasing and management of aircraft, aircraft maintenance, classification, surveying, insurance , and brokerage.

The Act also implements the provisions of the Cape Town Convention on International Interests in Mobile Equipment and its Aircraft Protocol, which is well known for its benefits to banks and aircraft lessors.

A number of interesting tax provisions apply in respect of income from aircraft/aircraft engines including inter alia:

- In case of 'operating' leases, the lessor is taxable on the lease payments. If the lessor maintains the burden of wear and tear, he is able to set off capital allowances against such income;
- In case of 'finance' leases, the lessor is chargeable only on the interest element of the lease with no deduction being available for capital allowances;
- Aircraft airframe, engines and overhaul thereto are written off for tax purposes over a period of not less than 6 years (i.e. a 16.67% rate per annum on a straight line method), whilst interiors and other parts are written off over a minimum of 4 years (i.e. a 25% rate per annum on a straight line basis);
- Aircraft leasing and other income derived from international air transport operations is taxable at the corporate tax rate of 35% with the possibility of reducing the effective tax burden to 5% through the tax refund mechanism and may be further reduced where foreign tax has been suffered;
- Interesting planning opportunities may arise regarding re-domiciliation to Malta of foreign companies conducting international aviation operations;
- Investment tax credits: Malta grants tax incentives, in line with the EU framework of Regional Aid, to companies that are involved in the repair, overhaul or maintenance of aircraft. These are provided mainly in the form of tax credits the quantum of which depends on the level of investment made by the particular company and on whether the company is considered to be a small, medium or large enterprise. Any untilised investment tax credits may be carried forward.

d) Digital Game Development

Since 2000, Malta has become a pioneer in the remote gaming industry. Malta is the only country in the EU which regulates remote gaming. Malta enjoys a reputation of a well-regulated jurisdiction which safeguards the interest of both operations and players. Malta offers an attractive fiscal regime and a relatively inexpensive gaming license process.

All Maltese gambling operations must be licensed by the Malta Lotteries and Gaming Authority to carry out any of the following activities;

(a) Online gaming
(b) Online betting offices or online betting exchange offices
(c) The promotion and abetting of gaming from Malta and
(d) Hosting and managing third –party online gaming companies in Malta

Maltese gaming licensees also pay a gaming tax, which is calculated according tot the type of gaming/betting operations they carry on in Malta. The total Malta Tax payable for each gaming license is capped.

e) Malta Ship & Yacht Registration

A Malta shipping company, registered under the Merchant shipping Act, is a tax efficient Vehicle with which one can own and register it‘s ships under a Maltese flag.

Malta provides a reputable flag ensuring compliance with international and European standards accompanied with the right balance of maritime services knowhow and fiscal advantages. Companies owning or operating (including under bare boat charter) Malta-flagged vessels may apply for a 100% exemption (i.e. no tax on profits from shipping activities). Furthermore, following recent amendments this exemption has also been extended to ship management companies from Income Tax on the resultant profit.

All types of vessels from pleasure yachts to oil rigs, including vessels under construction, may be registered under the Maltese flag provided they are wholly owned by citizens of the EU or by duly constituted corporate entities. Following recent amendments this exemption has also been extended to ship management companies.

Registration of ships and yachts under the Maltese flag and registered under the ownership of a Malta Shipping Company offers many advantages;

- attractive tax benefits, also applicable to yachts that can qualify for tonnage-tax
- no restrictions on the sale or transfers of shares of a company owning Maltese registered ships
- low company formation and ship registration costs
- the VAT on yacht leasing regulations allow prospective clients to pay an effective rate of as little as 5.4% VAT on the value of the yacht on the lease
- a tax declaration is submitted in lieu of an income tax return needs to be submitted on an annual basis, but there is no requirement for the submission of audited financial statements.

Malta: a centre of excellence

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, German, 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.

In its Global Competitiveness Report 2011-2012, the WEF classified Malta among the leading economies within the innovation-driven category, with its improvement being among the best among the EU-27 countries. Furthermore, it also ranked Malta amongst the most advanced nations for the availability of financial services, financing through local equity market, ease of access to loans and soundness of banks.

Today in Malta there are more than 200 multinational companies which account for over 85% of Malta's industrial output. Examples of such industries include:

- 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)

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

http://www.emd.com.mt/advocates/en-us/permanent-residence.aspx

http://www.pwc.com/mt/en/publications/tax-legal/assets/Tax_Newsletter-HNWI.pdf

http://www.dfadvocates.com/module/News/48/malta-retirement-programme-rules-establish-15-tax-rate-on-foreign-pensions-received-in-malta.htm

http://www.deloitte.com/assets/Dcom-Malta/Local%20Assets/Documents/Tax/Factsheets/dt_mt_factsheet_tax_comparison_of_residence_schemes_HQPR.pdf

http://www.deloitte.com/assets/Dcom-Malta/Local%20Assets/Documents/Tax/Factsheets/dt_mt_factsheet_tax_comparison_of_residence_schemes_HQPR.pdf

http://www.kpmg.com/MT/en/IssuesAndInsights/Doing%20Business%20in%20Malta/Documents/Intellectual%20Property%20Companies_sec.pdf

http://www.ccmalta.com/lawfirm/intellectual-property-law

http://www.pwc.com/mt/en/publications/tax-legal/assets/Artistic_royalties.pdf

http://www.timesofmalta.com/articles/view/20120824/local/slight-improvement-in-foreign-direct-investment.434193

http://www.timesofmalta.com/articles/view/20121123/business-news/Malta-s-attractiveness.446501

http://www.maltaenterprise.com/en/media/news/2012/me-welcomes-fdi-growth-manufacturing-and-services-industry

http://www.fff-legal.com/download/Malta%202012%20Budget%20TAX%20HIGHLIGHTS.pdf

http://www.state.gov/e/eb/rls/othr/ics/2012/191194.htm

http://www.di-ve.com/news/20-new-investment-projects-approved

http://www.financemalta.org/content.aspx?id=333946&count=0

http://www.timesofmalta.com/articles/view/20121122/local/malta-scores-well-in-investment-attractiveness-survey.446460

http://www.timesofmalta.com/articles/view/20121122/business-news/54-per-cent-of-non-Maltese-firms-consider-expansion-EY-survey.446414

http://www.maltaenterprise.com/en/media/news/2012/me-welcomes-fdi-growth-manufacturing-and-services-industry

http://www.timesofmalta.com/articles/view/20120910/local/malta-welcomes-economic-forum-report.436396

http://www.maltatoday.com.mt/en/newsdetails/news/national/86-of-investors-say-Malta-is-attractive-20121122

http://www.curmiandpartners.com/curmiandpartners/content.aspx?id=340174

http://www.pwc.com/mt/en/publications/tax-legal/index.jhtml

Malta: a base for international activities (PwC presentation)