



Lex Mundi European Union: Accession States Tax Guide

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A. General Information

Data published by the European Commission indicates that Malta's real GDP increased by 0.8% in 2004 and by a further 2.2% in 2005. Real GDP is forecast to increase by a further 2.3% in 2006 and by 2.1% in 2007.

The current government fiscal policy is geared at reducing the deficit; this has led to positive results during 2006 with a reduction by September of Lm13m to a current position of Lm72.9m. This was achieved mainly by reigning in capital expenditure and increasing revenue from taxes. The government received aggregate revenue of Lm537.3 million from taxation out of which Lm287.5 resulted from direct taxation.¹

B. Corporate income taxation

1. Which are the taxable entities?

The entities taxable under the Income Tax Act² (hereinafter “ITA”) are limited liability companies and partnerships *en commandite* whose capital is divided into shares which are constituted in Malta³; body of persons similar to these but constituted outside Malta, and co-operative societies registered in Malta⁴. A branch of a foreign entity is taxable in Malta at the

¹ “Economic Survey – October 2006” issued by the Ministry of Finance. It is available in softcopy at <http://www.mfin.gov.mt>.

² Chapter 123 of the Laws of Malta

³ Maltese companies are deemed to be resident in Malta for tax purposes, irrespective of control and management (Article 2 ITA definition of “resident in Malta”).

⁴ Article 2 ITA definition of “company”

normal corporate tax rate only on those profits arising from the activities of its permanent establishment in Malta.

Non-Maltese entities are deemed to be resident in Malta for tax purposes when the control and management of their business is exercised in Malta.

Other bodies of persons not being corporate entities, trusts, foundations, and other persons are subject to specific tax rules in terms of the ITA.

2. How is the taxable income determined?

Chargeable income is made up of any gains or profits mentioned in Section C, 2 hereunder. In order to determine the total income of any person, any outgoings and expenses that were wholly and exclusively incurred in the production of the income by such person during the year preceding the year of assessment are deductible.⁵ These include interest on loans, expenses made on repairs and replacement of equipment, bad debts, wear and tear of plant and machinery, expenditure on R&D, promotion of trade, and royalties paid for the use of a licence.

There are certain entities whose income is exempt⁶ from tax (such as income of the University of Malta, collective investment schemes⁷ other institutions of a public character, political parties, trade unions and co-operative societies). Shipping Organisations (whether Maltese registered or foreign) having tonnage tax ships registered in Malta are regulated by an ad hoc regime⁸ in respect to the income arising from their operations.

3. What are the applicable tax rates?

A company or other body corporate established at law is taxable at the rate of 35%⁹. Companies resident in Malta are to deduct (from the taxable profits of the company distributed as dividend) tax at a flat rate of 35%¹⁰. Through the full imputation system, the shareholders will then be able to claim a tax credit¹¹ for the said tax deducted by the company. Hence, there is no double taxation at the level of the company and the shareholders in relation to the same profits made by the company.

4. Are capital gains taxed separately?

Malta does not have a separate tax on capital gains. Capital gains tax is limited to the gains arising on the transfer of certain assets¹². The tax payable under the capital gains provisions is the same as that payable on income.

“Transfer” is defined widely and includes any partitions, settlement on trust, distribution/reversion of property settled on trust, alienation under any title, the redemption,

⁵ Article 14(1) ITA et seq.

⁶ Article 12 ITA

⁷ Article 12(1)(s)

⁸ Part III of the Merchant Shipping Act – Chapter 234 of the Laws of Malta.

⁹ Article 56(6) ITA

¹⁰ Article 59(1)a ITA

¹¹ Article 60 ITA

¹² Article 5 ITA:- ownership or usufruct over immovable property; securities; business goodwill; intellectual property rights; beneficial interests in trusts.

liquidation or cancellation of units or shares in a fund, and the maturity/surrender of linked long term policies of insurance.

Transmissions *causa mortis* are not considered as transfers for capital gains purposes. Transfers between group companies are treated as not giving rise to a taxable gain. There are a number of exemptions relating to non-residents¹³, and the transfer of securities listed on the Malta Stock Exchange.

5. May losses be carried back or forward and to what extent?

Yes. Under Maltese law, trading losses may be carried forward. This applies to any loss incurred by any person, solely or in partnership, in any trade, business, profession or vocation during the year preceding the year of assessment which, would have been taxable¹⁴, if it had been a profit.

In computing such loss, account will be taken of all other allowable deductions, except the ones dealing with plant and machinery. Where the amount of a loss incurred is such that it cannot be set off against capital gains or income from other sources for the year preceding the year of assessment, it shall, to the extent to which it cannot be wholly set off against capital gains or income for the said year, be carried forward and set off against what would otherwise have been the total income for subsequent years in succession. However, this doesn't apply to the set off of any loss incurred outside Malta which, if it had been a profit and had been retained outside Malta, would not have been taxable.

6. Are there any withholding taxes and at which rates?

Malta does not have a general system of withholding taxes though there are some limited cases where withholding taxes apply. For example, dividends paid to a Maltese resident individual from a company's Untaxed Account is subject to 15% withholding tax.

A 15% final withholding tax regime had been introduced in 1994 in respect of certain investment income, which includes interest paid on deposits with Maltese licensed banks; interest, discounts or premiums payable by Government or public corporations; interest, discounts or premiums payable by any entity following a public issue in Malta; capital gains arising from the disposal of units in a collective investment scheme; capital gains arising on the surrender or maturity of unit-linked insurance policies; profits distributed by a non-Maltese collective investment scheme through an authorized financial intermediary; and interest paid by a non-Maltese bank through an authorized financial intermediary.

7. Are there any preferential group taxation rules in force?

The ITA contains group relief provisions which are restricted to companies resident in Malta for tax purposes. To qualify, two companies have to be 51% subsidiaries of another company, or one is a 50% subsidiary of the other¹⁵. Such percentages include thresholds of holding of ordinary shares, voting rights, entitlement to profits available for distribution and any remaining assets on a winding up.

¹³ Article 4(1)g(ii) ITA

¹⁴ Article 14(1)g

¹⁵ Article 16 ITA

A member of a group company incurring a deductible loss (throughout the year preceding the year of assessment for which the relief is claimed) may pass that to another company within the group so that the latter can claim it as its own deduction from its total income for the same or subsequent years of assessment.

8. Which are the anti-avoidance rules currently in force?

Where the Commissioner of Inland Revenue (the “CIR”) is of the opinion that a resident Maltese company has not distributed all or part of its profits by way of dividends in order to avoid or reduce tax otherwise payable by the shareholders, a “deemed distribution order” may be issued¹⁶. The shareholders would then be assessed on such profits deemed to have been distributed by the CIR.

Any fictitious scheme or any scheme which has the sole or main purpose that of avoiding, reducing or postponing tax, then the CIR may issue an order (determining the tax payable and by whom) which has the effect of nullifying any advantages brought about by such scheme. Malta does not have any transfer pricing rules.

9. Which are the main administrative requirements to comply with the local tax authorities?

Tax Returns must be submitted on an annual basis by all taxpayers. A system of self-assessment¹⁷ was introduced in 1999 in virtue of which taxpayers calculate their own tax liability and pay when submitting their return.

10. With which countries have double taxation conventions already been concluded?

Malta has signed and ratified double taxation conventions with 44 different countries. A list is provided in Appendix 2.
(see also <http://www.mfsa.com.mt/mfsa/default.asp> for updates).

11. Are there any special laws providing tax incentives to certain taxable entities?

The Business Promotion Act¹⁸ makes provision for incentives (tax-holidays and lower tax regimes) and schemes for the promotion of business in Malta. The incentives and benefits are granted by government to promote certain areas of trade which are beneficial to the economy, raise employment levels and increase injections of income towards Malta. Companies receiving benefits under this Act must carry on such trade or business in Malta.

¹⁶ Article 43 ITA

¹⁷ Article 10 Income Tax Management Act (“ITMA”) Chapter 372 of the laws of Malta

¹⁸ Chapter 325 of the Laws of Malta and the Business Promotion Regulations

C. Individuals

1. Which are the taxable persons?

Persons who are domiciled and ordinarily resident in Malta are chargeable to tax on a world-wide basis. Persons who are either not ordinarily resident or not domiciled in Malta are subject to Maltese tax on a remittance basis only and on any income arising in Malta.

2. How is the taxable income specified?

Chargeable income is made up of any gains or profits made by persons, including¹⁹:

Gains or profits from trade, business or profession for as long as it was exercised;

Gains or profits from any employment or office;

Dividends, premiums, interest or discounts;

Any pension, charge, annuity or annual payment;

Rents, royalties, premiums and any other profits arising from property; or

Any sum realised under any insurance policy covering the risk of loss of profits.

3. What are the applicable tax rates?

Individuals who are resident in Malta are subject to a progressive rate of tax depending on their taxable income, and the rates vary between 15 – 35%. A distinction is drawn between married couples and any other individual resident:

In the case of a married couple resident in Malta:

Taxable Income	Tax	
Lm	Rate	Cumulative
0 – 4,300	0%	Lm 0
4,301 – 6,000	15%	Lm 255
6,001 – 7,250	20%	Lm 505
7,251 – 8,500	25%	Lm 817
8,501 – 10,000	30%	Lm 1,267
Over 10,000	35%	

In the case of any other individual resident in Malta including each spouse where the responsible spouse has opted for a separate computation:

Taxable Income	Tax	
Lm	Rate	Cumulative
0 – 3,100	0%	Lm 0
3,101 – 4,100	15%	Lm 150
4,101 – 5,000	20%	Lm 330
5,001 – 6,000	25%	Lm 580
6,001 – 6,750	30%	Lm 805
Over 6,750	35%	

¹⁹ Article 4 ITA provides a more detailed list which is not exclusive

4. Are capital gains taxed separately?

(*vide supra Corporations*: answer no. 4)

There are certain exemptions from tax on capital gains realised by individuals. Thus, where the property is assigned between spouses consequent to a (judicial or consensual) separation, or where the property formed part of the community of acquests between the spouses (or was otherwise owned in common between them) and is assigned to one of the spouses on the dissolution of the community (or is partitioned) between the spouses, or between the surviving spouse and the heirs of the deceased spouse, any capital gains arising there from are exempt from tax.

5. May losses be carried forward or back?

(*vide supra Corporations*: answer no. 5)

D. Capital**In outline, which are the main taxes on capital, if any?**

A Final Withholding Tax²⁰ is chargeable on certain transfers of immovables and rights thereon at a rate of 12% on the market price.

Malta has no capital or wealth taxes, no inheritance taxes, estate duties, probate duties or similar taxes. However, upon the death of an individual, duty at the rate of 5% is payable on the value of any immovable property transmitted to the heirs or at the rate of 2% on the value of any shares transmitted²¹.

E. Indirect taxes**In outline, which are the main indirect taxes, if any?**

The main indirect taxes are VAT and Customs Duties and Import Levies:

(a) Value-Added Tax is charged at the following rates:

18% on every supply of goods and services made for consideration in the course or furtherance of an economic activity, excluding exempt supplies and supplies made by exempt persons;

18% on all imports other than exempt imports;

5% on the supply of accommodation in any licensed hotels, guest houses, holiday furnished apartments or similar accommodation which is licensable.

(b) Customs Duties and Import Levies²²

Various customs duties and import levies are charged at varying rates on the importation of products from outside the EU.

²⁰ Article 5A ITA

²¹ Duty on Documents and Transfers Act – Chapter 364 of the Laws of Malta

²² Chapter 395 of the Laws of Malta

(c) Eco Contribution²³ - the contribution is a fixed amount established in a Schedule paid by persons manufacturing or importing products which are identified in the law.

F. Other duties

In outline, are there any other taxes, if any?

Malta has a duty which is payable on certain transfers of assets or on certain documents. Most of the duties are in respect of transfers of immovables and securities with the only dutiable documents being insurance policies and endorsements thereof. Insurance policies suffer duty at the rate of 10% of the annual premium with a minimum duty of LM5.

Duty is also chargeable on the following transfers:

(a) *Immovable Property*: 5% on transfers effected to residents of Malta. The standard rate is reduced to 3.5% on the first Lm30,000 when the property is being acquired for the purpose of establishing a person's sole ordinary residence by persons not requiring permits to purchase immovables. Transfers between group companies are exempt from the payment of duty.

(b) *Marketable Securities*: 2% calculated on the higher of the nominal value or the real market value of the securities. No duty is payable where foreign marketable securities are transferred to or by a person in Malta if the transfer is made through a Maltese licensed bank or licensed investment service provider. Transfers of shares or bonds listed on the Malta Stock Exchange as well as transfers between group companies are exempt from the payment of duty.

G. Enforcement- Litigation procedure

1. In outline, which are the existing measures in order to ensure compliance with the tax legislation?

There are a number of sanctions contemplated under the ITA and the ITMA to ensure that there is full compliance with their provisions. There are penalties established for the non-observance of administrative formalities of up to Lm50, penalties of up to Lm200 for not filing or filing an incorrect return, and penalties amounting to triple the tax due by the taxpayer for any person who wilfully seeks to evade tax or assist another in doing so²⁴. A person who omits amounts from his return or does not file such a return is liable to additional tax, calculated as a percentage of the tax due²⁵ and a further penalty depending on the time he takes for payment²⁶. Interest is also always due on tax which is not paid punctually at the rate of 1%²⁷

2. What is on average the duration of the litigation procedure for the final resolution of tax disputes?

Where the CIR makes an assessment²⁸ different to that presented by the taxpayer which the latter contests, he may send an objection (within 30 days from receipt of notice²⁹). If the CIR refuses the

²³ Chapter 473 of the Laws of Malta

²⁴ Articles 49-52 ITMA

²⁵ Article 56(12)c ITMA

²⁶ Schedule ITA – Table A and Table B

²⁷ Article 44(2A) ITMA

²⁸ Article 31 ITMA

taxpayer's objection³⁰, he may appeal to the Board of Special Commissioners³¹. The appeal must be filed within 30 days from the date of such refusal³². The Board determines the appeal and, if the taxpayers still feels aggrieved, he has a final right to appeal on points of law to the Court of Appeal³³.

On average, the duration of the litigation procedure starting from the date when a return was due would be around 2 years if the case is not appealed from the Board of Special Commissioners ("BSC") and 4 – 6 years if this case reaches the Court of Appeal. Reforms, aiming at reducing time, are under way for an "administrative review tribunal" to take over the functions of the Court of Appeal³⁴.

²⁹ Article 33(2) ITMA

³⁰ Article 33(5) ITMA

³¹ Article 34 ITMA

³² Article 35(1) ITMA

³³ Article 37(1) ITMA

³⁴ Administrative Justice Bill – Bill no. 82 of 2006; an appeal to this court would still be available.



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APPENDIX**INCOME TAX RATES**

Corporations	Partnerships	Individuals	Other entities
35%	35%	15 – 35%	

LIST of DTC AGREEMENTS

Country	Dividends			Interest	Royalties
	Rate for Minor Shareholding	Rate for Major Shareholding	Percentage required to qualify for Major Shareholding	Rates	Rates
	%	%	%	%	%
Albania	15	5	25	5	5
Australia	15	15	N/A	15	10
Austria	15	15	N/A	5	10
Barbados	15	5	5	5	5
Belgium	15	15	N/A	10	10
Bulgaria	0	0	N/A	-	10
Canada	15	15	N/A	15	10
China	10	10	N/A	10	10
Croatia	5	5	N/A	0	0
Cyprus	15	15	N/A	10	10
Czech Republic	5	5	N/A	0	5
Denmark	15	0	25	0	0
Egypt	10	10	N/A	10	12
Estonia	15	5	25	10	10
Finland	15	5	10	0	0
France	15	5	10	10	10
Germany	15	5	10	0	0
Hungary	15	5	25	10	10
Iceland	15	5	10	0	5
India	15	10	25	10	15
Italy	15	15	N/A	10	10
Korea (Republic of)	15	5	25	10	0

Country	Dividends			Interest	Royalties
	Rate for Minor Shareholding	Rate for Major Shareholding	Percentage required to qualify for Major Shareholding	Rates	Rates
Kuwait	0	0	N/A	0	10
Latvia	10	5	25	10	10
Lebanon	5	5	N/A	0	5
Libya	15	15	N/A	15	15
Lithuania	15	5	25	10	10
Luxembourg	15	5	25	0	10
Malaysia	-	-	N/A	15	15
Netherlands	15	5	25	10	10
Norway	15	15	N/A	10	10
Pakistan	-	15	20	10	10
Poland	15	5	20	10	10
Portugal	15	10	25	10	10
Romania	5	5	N/A	5	5
San Marino	10	5	25	0	0
Slovak Republic	5	5	N/A	0	5
Slovenia	15	5	25	5	5
Spain	5	0	25	-	-
South Africa	5	5	N/A	10	10
Sweden	15	0	10	0	0
Syria	0	0	N/A	10	18
Tunisia	10	10	N/A	12	12
UK	-	-	N/A	10	10

Agreements have also been concluded with the following countries in relation only to profits derived from the operation of ships and/or aircraft in international traffic:

Swiss Federation
United States of America

Double Taxation Agreements with the following countries have been signed but are not yet in force:

Morocco
Russia

United Arab Emirates (U.A.E.)

Agreements are in the process of being concluded with the following countries but the relative Agreements have not been signed (though some may have been initiated):

Greece
Ireland
Jordan
Singapore
Thailand
Turkey
Ukraine