

# Legal 500

## Country Comparative Guides 2024

**Malta**

**Tax**

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This country-specific Q&A provides an overview of tax laws and regulations applicable in Malta.

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# Malta: Tax

## 1. How often is tax law amended and what is the process?

Amendments to the Income Tax Act and Income Tax Management Act ("the Income Tax Acts") – being primary legislation – are typically made annually through the Budget Measures Implementation Act, which Act implements measures announced in the Finance Budget for the year plus some other amendments. The Finance Budget Speech is typically delivered in October with the relative Budget Measures Implementation Bill being published shortly thereafter.

Once the Budget Implementation Bill is approved by Parliament, roughly in Q1, early Q2 the following year, it is presented to the President of Malta for his assent and published in the Government Gazette, at which stage the bill becomes law.

On the other hand, amendments to any subsidiary legislation – being secondary legislation – published in terms of the Income Tax Act, as well any new piece of subsidiary legislation published in terms of same, occur more frequently, throughout the year. Such amendments are made through a legal notice which is published in the Government Gazette and come into force further to the exercise by the Minister responsible for Finance. This latter process of amendment / introduction of subsidiary legislation is far quicker as it does not require the intervention of Parliament.

## 2. What are the principal administrative obligations of a taxpayer, i.e. regarding the filing of tax returns and the maintenance of records?

Malta's system of taxation is a self-assessment one, whereby the taxpayer assesses his or her chargeable income and resulting tax charge.

An individual in receipt of income from sources where tax is withheld wholly at source e.g. employment income, is not required to file an income tax return, unless requested to do so by the Revenue. Individuals in receipt of income subject to tax from sources where said tax is not withheld at source (e.g. income from self-employment, rental income, foreign sourced income remitted to Malta) shall be required to file a income tax return on an annual basis; in particular cases, a specific form other than a full

income tax return may be applicable, depending on the tax treatment of the income. With respect to individuals, the tax year is the calendar year, with the taxpayer having to file a tax return by 30th June of the following year. Individuals may, in certain cases, also be subject to an obligation to pay tax on account of the current year tax liability by way of provisional tax.

As far as companies and foundations are concerned, the starting point is audited financial statements prepared in line with International Financial Reporting Standards (or a less onerous set of local accounting standards called GAPSME, subject to the fulfilment of applicable statutory conditions), on the basis of which a tax computation is prepared. The standard tax year for companies is the calendar year, although it is possible for a company to seek an alternative year end, going for shorter or longer tax years. Where the particular company's or foundation's tax year ends on 31 December, the relative income tax return is to be submitted by October of the following year (typically extended to November for online filings. This type of taxpayer is generally subject to the payment of provisional tax, unless particular exceptions relative to the source of income involved applies.

In certain instances, trusts may be tax transparent as a result of the particular trust's sources of income and the tax status of its beneficiaries and, in such cases, shall have no tax compliance obligations in Malta. Foundations that opt to be taxed as a trust may likewise have no local tax compliance obligations.

The law requires persons carrying on a trade, business, profession or vocation to keep proper and sufficient records of income and expenditure for at least 9 years following the completion of the transaction, act or operation to which they relate. As far as persons in receipt of income from other sources are concerned, it is advisable for them to maintain said records for also for at least 9 years, this being aligned with the time bar period. Nevertheless, this prescription period shall in no case commence before such person has fully complied with the provisions of the Income Tax Acts. As a result, it is not uncommon for taxpayers to retain records for longer periods of time.

## 3. Who are the key tax authorities? How do they

## engage with taxpayers and how are tax issues resolved?

The Malta Tax and Customs Authority (the "MTCA") is the regulatory authority for tax matters in Malta. The MTCA is departmentalised into various sections, including the International Corporate & Tax Unit, the VAT Department, Customs Department, Technical Team and Taxpayer Services.

The MTCA is receptive to queries received from both the taxpayer directly and tax advisors. Response times in response to requests for confirmation put forward by advisors vary, depending on the complexity of the issues raised; longer response times apply where the MTCA is yet to take a position on the technical issue raised.

In recent years, the MTCA has significantly improved its online services, both through the availability of online filings as well as with reference to the availability of data concerning the particular taxpayer to said taxpayer and his tax representative, resulting in increased efficiency.

## 4. Are tax disputes heard by a court, tribunal or body independent of the tax authority? How long do such proceedings generally take?

When a taxpayer feels aggrieved with respect to a tax assessment, the first right of recourse the taxpayer has is to file an objection to said assessment with the MTCA. If this objection is refused, the taxpayer may appeal this decision before an independent body, that is the Administrative Review Tribunal (the "ART"), presided over by a magistrate, within 30 days from the date of service upon him, of the refusal by the MTCA. Should the taxpayer not be satisfied with the decision of the ART, the taxpayer may appeal from said decision, solely on points of law, to the Court of Appeal.

Due, primarily, to under-resourcing, it is a fact that proceedings before ART and the Court of Appeal currently typically drag on for years, as a result of which taxpayers will often resort to out of court settlements with the CfR, in practice.

## 5. What are the typical deadlines for the payment of taxes? Do special rules apply to disputed amounts of tax?

Malta operates a provisional tax system, whereby tax is paid in advance during the basis year in question. The provisional tax amount for the particular basis year is based on the quantum of income declared by the

taxpayer in the previous year – there is effectively an exemption from the payment of provisional tax in the first year. Provisional tax payments are due by 30<sup>th</sup> April (20%), 31<sup>st</sup> August (30%), 31<sup>st</sup> December (50%). This amount is then available for set off against the taxpayer's actual tax liability, with any amount of underpaid tax to be settled by 30th June of the following year for individuals, and the tax settlement date for companies and foundations taxed as companies.

## 6. Are tax authorities subject to a duty of confidentiality in respect of taxpayer data?

Taxpayer data is recognized as highly confidential and safeguarded through several provisions in the Income Tax Acts and also the Professional Secrecy Act (Chapter 377 of the laws of Malta – the "PSA").

There are also safeguards in the ITMA which provide that any person who has or had access to, possession of or control over any documents, information, returns or assessments, relating to the Income Tax Acts, or copies thereof, and who at any time communicates or attempts to communicate any such information or anything contained therein to any person, shall be guilty of a punishable offence.

## 7. Is this jurisdiction a signatory (or does it propose to become a signatory) to the Common Reporting Standard? Does it maintain (or intend to maintain) a public register of beneficial ownership?

Malta transposed the Common Reporting Standard by virtue of the Cooperation with other Jurisdiction on tax matters Regulations (S.L 123.127). In line with the 5<sup>th</sup> AML Directive, the Malta Business Registry maintains a central Register of Beneficial Owners for legal persons, covering commercial partnerships (including companies), foundations, associations, voluntary organisations, co-operatives and sports organisations; a Register for Beneficial Owners of trusts is maintained by the Malta Financial Services Authority, the regulator of trustees.

## 8. What are the tests for determining residence of business entities (including transparent entities)?

A company (as defined in the Income Tax Act) is resident in Malta for income tax purposes by reason of its incorporation in terms of Maltese law. Any other body of

persons, not being therefore a company incorporated in Malta, shall be resident in Malta should the control and management of its business be exercised in Malta. All this is subject to any applicable double tax treaty or treaties, of which there are currently in excess of 80.

#### **9. Do tax authorities in this jurisdiction target cross border transactions within an international group? If so, how?**

The international tax landscape has changed significantly and at a rapid pace over the past few years. Malta has introduced a number of anti-abuse and aggressive tax planning mitigation laws into domestic legislation in recent years; these include the Anti-Tax Avoidance Directives, the Tax Intermediaries Directive, more commonly referred to as DAC 6, amongst other matters. Effective 1st January 2024, Malta will also introduce transfer pricing rules into its legislative framework.

There has undoubtedly been an increase in the number of exchange of information requests raised in recent years, in line with increased efforts on the part of foreign tax authorities, originally post the 2008 financial crisis, and now in view of the significant financial outlay on the part of governments worldwide to support local businesses impacted by the effects of the COVID-19 pandemic, and it is therefore expected that this trend shall continue going forward.

#### **10. Is there a controlled foreign corporation (CFC) regime or equivalent?**

Malta transposed the EU Anti-Tax Avoidance Directive and accordingly introduced CFC Rules effective 1<sup>st</sup> January 2019.

#### **11. Is there a transfer pricing regime? Is there a "thin capitalization" regime? Is there a "safe harbour" or is it possible to obtain an advance pricing agreement?**

Effective 1st January 2024, Malta will introduce transfer pricing rules into its legislative framework. In terms of the Transfer Pricing Rules, it should be possible for a taxpayer to obtain an advance pricing agreement.

There are no thin capitalisation rules currently in force in Malta.

#### **12. Is there a general anti-avoidance rule (GAAR) and, if so, how is it enforced by tax authorities (e.g. in negotiations, litigation)?**

The ITA incorporates a general anti-avoidance rule which is considered to be a wide and encompassing GAAR. In addition, a second GAAR was introduced into the ITA as a result of the transposition by Malta of the EU Anti-Tax Avoidance Directive. Both GAARs are largely the same, with that introduced by virtue of ATAD 1 being more far reaching in nature.

In the absence of data in this regard, it is difficult to gauge whether the enforcement of the GAARs is raised in negotiations, but it is not perceived that this is regularly the case. This being said, one cannot rule out that the application of the GAARs shall increase in practice, going forward, particularly in light of the evolving tax landscape.

#### **13. Is there a digital services tax? If so, is there an intention to withdraw or amend it once a multilateral solution is in place?**

There is no digital services tax currently in force in Malta.

#### **14. Have any of the OECD BEPS recommendations, including the OECD's recent two-pillar solution to address the tax challenges arising from digitalisation of the economy, been implemented or are any planned to be implemented?**

Malta has transposed, primarily through the transposition of EU Directives implementing same, a number of the OECD BEPs recommendations. These include the introduction of hybrid rules, exit taxation, CFC rules, interest limitation rules, mandatory disclosure by tax intermediaries, the Common Reporting Standard, country by country reporting, amongst others. Malta has also implemented a patent box regime based on OECD standards and the Multilateral Instrument.

As an EU Member State, Malta is expected to transpose Pillar 2 into its legislative framework by year end. As of yet, it is not yet clear how the mechanics of Pillar 2 and all its complexities will be transposed into our current legislative framework but it is expected for the first amendments to be addressed in the Financial Budget in October.

## 15. How has the OECD BEPS program impacted tax policies?

As an EU Member State, Malta has transposed the various EU Directives which implemented the BEPS action plan across the European Union. Accordingly, a number of new tax concepts have been introduced into the Income Tax Acts, such as CFC rules, an interest limitation rule, exit taxation, country-by-country reporting and mandatory disclosure of tax arrangements, amongst other matters.

## 16. Does the tax system broadly follow the OECD Model i.e. does it have taxation of: a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties? If so, what are the current rates and how are they applied?

Although not a member of the OECD, Malta does generally follow the OECD Model of taxation and international tax principles, so much so that the vast majority of Malta's 80 plus double tax treaties are based on the OECD Model Double Tax Convention.

The Income Taxes Acts bring to charge income from various sources and capital gains realised upon the transfer of an exhaustive list of assets. Specifically, tax is charged as follows with respect to these categories of income and gains:

a) Companies, as defined, are charged to tax in Malta at a flat rate of 35% on income and certain capital gains on a worldwide basis, subject to certain reduced rates and exemptions applying to particular income and gains sources and any applicable double tax treaties.

b) Individuals are subject to tax at progressive rates of tax, going up to a maximum 35% rate. The ITA caters for different tax bands, depending on whether the individual applies (i) single rates, (ii) married rates, (iii) parent rates or (iv) non-resident rates. In all cases, the maximum rate is 35%.

c) Council Directive 2006/112/EC on the common system of value added tax, the 6th VAT Directive, has been fully transposed into Maltese law. The default VAT rate is 18%. Reduced rates of 5% and 7% apply to particular supplies.

d) Savings income, such as dividends and interest, as well as royalties, arising in Malta are subject to tax in Malta at normal rates, subject to any applicable double

tax treaty. The ITA does cater for certain exemptions: these include the participation exemption for dividends and a full exemption for interest and royalties payable to non-resident recipients, subject to certain statutory conditions.

e) Rental income is taxed in one of two ways, at the taxpayer's option. The rental income may be added to other income of the taxpayer and declared in the taxpayer's tax return, with the resultant income less deductible expenses (in the case of rental income, the allowable deductions are ground rent, financing costs and a maintenance allowance) being taxed at the applicable tax rates, depending on the nature of the taxpayer. Alternatively the taxpayer may opt to pay tax at a flat rate of 15% on the gross rental income.

Malta does not currently impose any property taxes, except on a transfer of the property. Property transfer tax is levied at a fixed rate of tax, currently set at a default rate of 8%, subject to certain exemptions e.g. on the transfer of one's main residence should the taxpayer have resided therein for at least 3 years.

f) The ITA brings to charge capital gains realised upon the transfer, as defined, of an exhaustive list of assets which is quite limited in scope. This includes the transfer of immovable property, securities, intellectual property, businesses, the beneficial interest in trusts, amongst others; assets such as aircraft, vessels, art, antiques, jewelry and cash currently fall outside scope of capital gains tax in Malta.

g) The Duty on Documents and Transfers Act (chapter 364 of the laws of Malta – the "DDTA") levies transfer duty – more commonly referred to as 'stamp duty' – on the transfers inter vivos and causa mortis of a very limited number of assets, which include immovable property situated in Malta, securities, interests in partnerships. The default rate of duty is 2% of the value or the consideration, whichever is the higher, which rate goes up to 5% in the case of immovable property or securities / interests in entities with significant property holdings. Malta does not currently impose any wealth tax or capital duties on assets; there is also no inheritance tax system currently in force, save for the limited application of the transfer duty regime described herein on transmission of the assets in question causa mortis.

## 17. Is business tax levied on, broadly, the revenue profits of a business computed in accordance with accounting principles?

Malta's system of taxation is a self-assessment one,



whereby the taxpayer assesses his/her/its chargeable income and resulting tax charge. As far as companies are concerned, the starting point is audited financial statements prepared in line with International Financial Reporting Standards (or a less onerous set of local accounting standards called GAPSME, subject to the fulfilment of applicable statutory conditions), on the basis of which a tax computation is prepared. Income tax is then charged on the company's net profits – i.e. profits less any allowable expenses for tax purposes.

### **18. Are common business vehicles such as companies, partnerships and trusts recognised as taxable entities or are they tax transparent?**

Maltese law caters for several entities, including:

(i) the limited liability company, which is by far the most popular vehicle in Malta for business purposes;

(ii) partnerships, including civil partnerships – which are tax transparent unless the partnership opts to be taxed as a company for tax purposes;

(iii) private foundations, which in terms of recent amendments may now engage in a trade or business. Foundations are treated as companies for tax purposes but may apply to be taxed as a trust which can achieve tax transparency, subject to the satisfaction of a number of conditions.

(iv) Maltese proper law trusts, albeit technically not an entity, may also be used for the purposes of trade or business, although this is uncommon; typically any such activity is carried out through a special purpose vehicle set up by the trust, such as a company. Trusts are tax transparent in certain circumstances, such as when the income generated by it is foreign sourced investment income and the beneficiaries are not resident in Malta for tax purposes; the trustees may, however, in certain instances, opt to have the trust taxed as a company.

### **19. Is liability to business taxation based on tax residence or registration? If so, what are the tests?**

Liability to income tax on business profits is based on upon a combination of source, fiscal residence and registration, depending on the type of taxpayer involved.

Malta sourced business income is subject to tax in Malta, subject to any applicable double tax treaty, of which there are currently 80 plus in force.

A sole trader who is resident and domiciled in Malta for tax purposes is chargeable to tax in Malta on his worldwide business income, again subject to any applicable double tax treaty.

A company (as defined in the Income Tax Act) is resident in Malta for income tax purposes by reason of its incorporation in terms of Maltese law. Any other body of persons, not being therefore a company incorporated in Malta, shall be resident in Malta should the control and management of its business be exercised in Malta. All this is subject to any applicable double tax treaty or treaties.

In all instances, should the taxpayer be resident or domiciled in Malta to tax purposes, but not both, he shall only be liable to tax in Malta on any Malta sourced business income and to any foreign sourced business income, but only to the extent the latter is remitted to Malta

### **20. Are there any favourable taxation regimes for particular areas (e.g. enterprise zones) or sectors (e.g. financial services)?**

Malta Enterprise, Malta's economic development agency, offers a range of incentives, including tax incentives such as investment tax credits, subsidised financing, amongst others, to persons engaging in activities in a number of target sectors locally. Generally, these initiatives seek to provide assistance to certain businesses (mostly those involved in industrial activities) and to attract specific forms of investment to Malta. Some of these measures include: Investment Aid provisions aiming to sustain the regional industrial and economic development; Research and Development provisions assisting industrial research and experimental development; Business Development measures facilitating value added projects; and the Micro Invest scheme encouraging investments with the aim of innovating, expanding and developing undertakings.

Malta also offers a number of tax programmes aimed at incentivising highly skilled individuals to relocate to Malta and work in specific sectors. Generally, these programmes provide for a flat rate of tax of 15% on employment income arising in Malta, subject to the satisfaction of a number of conditions. These tax programmes apply primarily with respect to the financial services, gaming, aviation and shipping sectors.

### **21. Are there any special tax regimes for intellectual property, such as patent box?**

The 'Patent Box Deduction Rules', introduced in 2019, provide for a special tax regime for income arising from patents, similar intellectual property (IP) rights and copyrighted software, as defined. The Patent Box Deduction Rules are modelled on the relevant BEPS recommendations. Subject to satisfying all requirements, a beneficiary may claim a deduction against income and capital gains derived from qualifying IP (as defined), which deduction is calculated according to a specific formula which divides the qualifying IP expenditure by the total expenditure related to the particular IP right.

## **22. Is fiscal consolidation permitted? Are groups of companies recognised for tax purposes and, if so, are there any jurisdictional limitations on what can constitute a tax group? Is there a group contribution system or can losses otherwise be relieved across group companies?**

In terms of the relatively new Consolidated Group (Income Tax) Rules (S.L. 123.189), a parent company and one or more 95% subsidiary companies (as defined therein) may opt to be treated as a single 'fiscal unit', a tax group, for income tax purposes; non-resident companies may also form part of such fiscal unit. Upon registration as a fiscal unit, the parent company shall be considered the 'principal taxpayer' of the fiscal unit and the chargeable income of the members of the fiscal unit shall be taxable solely in the hands of such principal taxpayer. In practice, this may permit the fiscal unit to pay the net amount of Maltese tax due by the group. The Tax Grouping Rules also cater for various tax deductible items such as tax losses, capital allowances, and so forth, to be effectively aggregated at the level of the parent company. Naturally, this option is dependent on the fulfilment of several additional statutory conditions, including an obligation on the parent company's part to also prepare a consolidated set of financial statements for itself and the subsidiaries included in the fiscal unit.

## **23. Are there any withholding taxes?**

In Malta, there is a 15% rate of withholding tax which is, and in certain instances may be, applied in relation to certain investment income, mainly dividends and interest, as well as rental income. No withholding taxes are levied on dividends, save where a dividend is paid to a resident recipient, as defined, from a company's Untaxed Account, one of five tax accounts. Tax may be withheld at source upon the payment of Malta sourced royalties and interest to a non-resident recipient; an exemption may however be availed of should the recipient be the beneficial owner

of said royalties or interest, should the recipient not be owned and controlled by, nor act on behalf of, persons ordinarily resident and domiciled in Malta, and provided the recipient does not carry on a trade/business in Malta through a permanent establishment with which the royalties or interest income concerned is effectively connected.

## **24. Are there any environmental taxes payable by businesses?**

There are currently no environmental taxes which are payable by businesses in Malta, save for a minimal eco-contribution tax payable on tourist accommodation.

## **25. Is dividend income received from resident and/or non-resident companies taxable?**

When a resident company distributes dividends out of profits on which it has paid tax at 35%, no further tax is due by the shareholders and a credit for the tax paid by the distributing company is available to the shareholders against the latter's tax liability. This system applies when profits are distributed from two of the company's tax accounts, namely the Maltese Taxed Account and the Foreign Income Account. Distributions of profits from either of these two tax accounts trigger a right, in the hands of the shareholders, to a further refund of Malta tax paid by the company. The effective tax rate after said refund will generally range from 0% to 10%, with the standard 6/7 tax refund resulting in an overall effective Malta tax rate (assuming a full distribution of the taxed profits) of 5%. Tax refunds are Malta tax exempt and are payable within a statutory deadline of a few weeks in the same currency in which the tax shall have been paid by the distributing company. Distributions of profits from another tax account, the Untaxed Account, triggers a 15% withholding tax when the dividend is paid to a resident recipient, as defined.

Dividends distributed by non-resident companies that are chargeable to tax in Malta in the hands of the taxpayer shall, in certain instances and subject to the tax status of the taxpayer and remittance basis of taxation, be subject to the investment income provisions. Said instances include distributions of profits by non-resident investment funds to resident taxpayers through the services of an authorised financial intermediary as well as profits paid out by a non-prescribed fund of an overseas based scheme to a resident taxpayer through the services of an authorised financial intermediary.

## 26. What are the advantages and disadvantages offered by your jurisdiction to an international group seeking to relocate activities?

Malta brings quite a lot to the table as far as international groups considering relocating to Malta are concerned. Malta has been a member of the EU since 2004 and of the eurozone as of 2008. The official languages are English and Maltese and a number of other languages are widely spoken.

Over the past decades, Malta has exploited its strategic location in the centre of the Mediterranean Sea, its highly educated, multi-lingual, flexible and cost-effective work force, a sound regulatory regime to become a jurisdiction of choice for such groups. Many such companies have in fact relocated to Malta in recent years.

There are many reasons for considering Malta as a base for international operations. These include:

1. a modern legal and tax framework and 80 plus double tax treaties;
2. accessible and flexible regulators;
3. a strong industrial relations record;
4. an excellent telecommunications infrastructure;
5. a convenient European time zone;
6. one of the largest maritime registers in the world;
7. a reasonably priced labour force having an excellent work ethic.

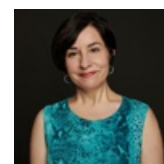
In addition to the above, Malta also has an attractive corporate tax regime, that includes a generous participating holding regime.

Naturally, Malta also has certain disadvantages, such as those linked to difficulties and additional costs resulting from the fact that it is an island.

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