MALTA COMPANIES

A SUMMARY OF MALTESE COMPANY LAW & MALTA'S CORPORATE TAX SYSTEM

Malta
Cyprus
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CHETCUTI CAUCHI
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Malta

Malta's success as a financial centre is owed to its unique advantages which are all combined into one reputable jurisdiction.

To start off with, Malta is situated in Europe at the heart of the Mediterranean Sea, bridging the gap between Europe, North Africa and the Middle East. Malta is a member state of the European Union and part of the Schengen Area.

Consequently, Malta enjoys the **reputation of an onshore jurisdiction** which is fully compliant with EU directives and with international standards (OECD, FATF, UN and FSF).

Even more so, Malta has been ranked amongst the **top five soundest banks** in the world. This, along with its **stable political climate**, makes Malta a secure destination for your investments.

Furthermore there are also various tax benefits which one may avail of. Upon payment of tax in Malta, one may claim a **refund** which may result in effective tax rates ranging from **0% to 6.25%.** Also, Malta enjoys an array of tax treaties with at least **68 jurisdictions.**

Maltese Corporate Vehicles

Limited Liability Companies:

- Public (plc);
- Private (Ltd).

Malta Branches of Foreign Companies (treated as local companies for tax purposes)

Partnerships:

- en commandite the capital of which is divided into shares
- en commandite the capital of which is not divided into shares;
- en nom collectif

A summary on Malta companies

Capital Requirements – a low €1,250

Shareholders – typically 2 or more

Company Objects/Activities – various options possible

Directors – minimum one (may be a corporate entity or an individual)

Company Secretary – minimum one (has to be an individual)

Registered office – has to be in Malta

General Meeting – minimum one per annum

Accounting & Accounting Year
Annual audited accounts need to be prepared in accordance with International Financial Reporting Standards (IFRSs) and filed for public inspection. Maltese law allows a choice of a company's year-end.

Company Incorporation Procedure

Pre-Engagement Process

1. Analysis of client scenario and guidance in relation to corporate structuring
2. Provision of fee proposal based on your requirements and on the agreed corporate structure
3. Address an clarifications required
4. You return fee proposal signed and dated by scan-email to us and organise payment of start-up and first year fees.
5. We allocate a Company Formation Professional to handhold you through the process.

Upon Engagement

6. We send you company formation Documents Checklist & Guidelines and assist you in preparing the necessary Customer Due Diligence documents required for the incorporation and bank account opening.
7. We process the documents provided & prepare incorporation documents and bank account opening forms.
8. We register the Company with the Registry of Companies and with the IRD and VAT Dept. if applicable.

Formation Procedure

9. We introduce your company/ies to the bank chosen by you and submit the bank account opening documents.
10. We allocate an Accounting team and a main accountant to you who sets up the accounting system for your company/ies and provides accounting procedures manual.

Company Incorporation Fees

As corporate, tax and legal professionals with a passion for precise and efficient solutions, we would need to discuss your needs on a personal basis to be able to propose a solution that best meets your needs.

Timescale

Maltese Registered Co.	€
Earnings before tax	1,000
Corporate Tax @ 35%	350
Earnings after tax	650

Shareholder	€
Gross Dividend	1,000
Tax at company level on dividend received	350
Tax refund 6/7ths of 350	300
Effective tax suffered	**50**

Company Tax System

Companies registered in Malta are deemed to be resident and domiciled in Malta and are therefore subject to tax on their worldwide income less permitted deductions at the corporate income tax rate which currently stands at 35%.

Full Imputation System

Malta tax resident shareholders receive full credit for any tax paid by the company on profits distributed as dividends by a Malta company, thereby avoiding double taxation on that income.

Where the shareholder would be liable to tax in Malta on the dividend at a rate which is lower than the company rate of tax any excess imputation tax credits are refundable.

Tax Refunds

Shareholders of a Malta company in receipt of a dividend may elect to claim a refund of all or part of the Malta tax paid at the level of the company on such income. The amount of refund which may be claimed depends on the type and source of income received by the company.

Shareholders of companies having a branch in Malta receiving dividends out of branch profits subject to tax in Malta are eligible to the same Malta tax refunds as shareholders of Maltese companies.

The law requires refunds to be paid within 14 days from the day in which a refund becomes due. A refund becomes due when a complete and correct tax return for the company and shareholders is submitted, tax due is paid in full and a complete and correct refund claim is made.

In all cases, no refund may be claimed in respect of tax suffered on income derived, directly or indirectly, from immovable property situated in Malta. profits subject to tax in Malta are eligible to the same Malta tax refunds as shareholders of Maltese companies.

100% refund

Shareholders are entitled to a full refund of the tax paid by the company resulting in an effective combined tax rate of zero, in respect of dividends received from participating holdings

1 which fall within the safe harbours
2 or satisfy the anti-abuse provisions or in respect of the tax paid on capital gains derived from the disposal of such holding as outlined under para 4.2 above.

The 5/7ths refund

The 5/7refund applies when dividends are distributed out of profits derived from:

- passive interest or royalties
- dividends received from a Participating

Holding (as defined above) in a body of persons which does not fall within the safe harbours or satisfy the anti-abuse provisions
mentioned above.

This results in an effective tax rate of 10% on passive interest and royalties or non-qualifying dividends in the hands of the shareholders.

The 6/7ths refund

When dividends are paid to the shareholders out of any other income not mentioned above, these shareholders become entitled to claim a refund of 6/7ths of the Malta tax paid by the company. This results in an effective rate of Malta tax of 5% in the hands of the shareholders.

A numerical example of the manner in which the refund mechanism works is provided below:

The 2/3rds refund

Where double taxation relief is claimed in respect of any foreign income received by a Malta company, the refund which a shareholder may claim is limited to 2/3rds of the Malta tax paid.

Effective system for relief of double taxation

- Unilateral relief, including credit system for relief of underlying tax
- Double Tax Treaty Network
- Flat Rate Foreign Tax Credit system (FRFTC)

Unilateral Relief

This mechanism provides a virtual double tax treaty between Malta and the rest of the world and allows a tax credit whenever foreign tax has been suffered regardless of whether Malta has a double tax treaty with such jurisdiction or not.

- that the income arose overseas;
- that the income suffered foreign tax; and
- the amount of foreign tax suffered.

The foreign tax suffered is allowed as a credit against the tax chargeable in Malta on the gross chargeable income. The credit shall not exceed the total tax liability in Malta on the foreign sourced income.

Tax Treaty Network

Malta has signed close to 80 Double Taxation Treaties, for the most part based on the OECD model and including double taxation agreements with all the EU Member States.

Double Taxation Treaties

In force: Albania, Australia, Austria, Bahrain, Barbados, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, India, Ireland, Isle of Man, Israel, Italy, Jersey, Jordan, Korea, Kuwait, Latvia, Lebanon, Libya, Lichtenstein, Lithuania, Luxembourg, Malaysia, Mauritius, Mexico, Moldova, Montenegro, Morocco, Netherlands, Norway, Pakistan, Poland, Portugal, Qatar, Romania, San Marino, Russia, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Syria, Tunisia, Turkey, United Arab Emirates, United Kingdom, USA, Uruguay.

Treaties signed but not yet in force: Belgium, Ukraine.

Tax Information Exchange Agreements in Force: Bahamas, Bermuda, Cayman Islands, Gibraltar, USA.

Tax Information Exchange Agreements – signed but not in force: Macao

Flat Rate Foreign Tax Credit

A company in receipt of overseas income may benefit from the FRFTC provided an auditor's certificate stating that the income arose overseas is available.

No Other Taxes!

- No thin-cap rules;
- No transfer pricing rules;
- No withholding taxes on interest and royalties to non-residents;
- No withholding tax on dividend payments;
- No capital duties or wealth taxes — max. reg. fees €1,753
- No stamp duties on share transfers in companies owned by non-residents
- No exchange control restrictions on distribution of the profits or dividends to the shareholders

Advance Tax Rulings

Procedure for formal rulings exists to provide certainty on the legal application to a specific transaction. Rulings are binding on Inland Revenue for 5 years and survives a change in law for 2 years. A ruling is normally issued within 30 days of application.

Even if not expressly regulated in terms of law, an informal system of Revenue guidance is also possible in the form of a letter of guidance from Revenue. This creates a legitimate expectation on which the taxpayer may rely and is considered by the Inland Revenue Department as binding.

Compliance with EU Law

The 2007 Corporate Tax Reform:

- Extension of Malta tax refund system to dividends derived by all persons from all sources;
- Extension of Malta tax refund system to the shareholders of companies having a Malta branch;
- Introduction of Participation Exemption.

Maltese companies also enjoy access to **EU Parent Subsidiary Directive** since May 2004 when Malta joined as a full member of the European Union.

Malta in the EU

As a member of the EU, Malta has adopted amongst others the EU Parent-Subsidiary Directive which eliminates withholding taxes on cross border transfer of dividends from subsidiary to parent companies within the EU and the Interest and Royalties Directive which exempts interest and royalty payments payable to a company in a member state from tax in the source member state.

Other Advantages

- No withholding taxes apply on distribution of dividends to the shareholders;
- Stamp duty and capital gains exemptions apply to the transfer of shares in a Malta company by nonresidents;
- No taxes or restrictions on the distribution of the dividends from the Malta company.
- Tax is paid and refund is received in same currency of company's share capital.
- No thin-capitalisation rules;
- No transfer pricing rules;
- No withholding taxes on interest and royalties to non-residents;
- No capital duties;
- No wealth taxes;

Confidentiality

The Professional Secrecy Act establishes a high standard of confidentiality for professional practitioners such as advocates, notaries, accountants, auditors, trustees and officers of nominee companies and licensed nominees amongst others. Those who violate professional secrecy may be prosecuted under Section 27 of the Criminal Code and on conviction may be liable to a maximum fine of €50,000 and/or a 2 year prison sentence.

Meet the Team

Partners

Dr Jean-Philippe Chetcuti

Tax, Citizenship & Residency,
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- Tax & Immigration Lawyer, advisor to HNWIs, their advisors & Family Offices.
- Managing partner, CCA
- Member, AILA American Immigration Lawyers Association (International Chapter)
- Member, IBA International Bar Association (Immigration & Nationality Law Committee)
- Member, Malta Chamber of Advocates, Malta Chamber of Commerce, International Tax Planning Association, International Fiscal Association.
- Chairman, STEP Society of Trust & Estate Practitioners (Malta Branch)
- Executive Committee Member, IFSP Institute of Financial Services Practitioners
- Co-founder, Secretary, MAFE Malta Association of Family Enterprises, which he represents at the European Family Business Association.
- Chairman, Marketing Sub Committee (IFSP).

Dr Priscilla Mifsud-Parker
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- Private clients' lawyer specialising in immigration law and in trusts and estates.
- Partner, CCA
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- Regulated Business, IP, Art & Cultural Property Lawyer
- Senior partner, CCA
- Registered trademark & patent attorney in Malta & in the EU
- Approved EPO European Patent Attorney
- Member, Institute of Financial Services Practitioners, Society for Trusts & Estates Practitioners, Chamber of Advocates
- Member, International Trademark Association, Remote Gaming Council
- Government Advisor, Malta Remote Gaming Regulations
- Engaged by Government for the Digitalisation of the Domestic Patent Database for Malta Enterprise
- Advisor, Malta Enterprise on the Roche Bolar Exemption for the Pharma Industry
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- Member, Malta Association of Family Enterprise (Co-Founder and Secretary)
- Member, Finance Malta Foundation
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- Member, Malta Institute of Taxation
- Member, International Tax Planning Association
- Member, Institute of Financial Services Practitioners
- Member, Society for Trusts & Estat Practitioners (STEP) Malta Branch

The Law Firm

Chetcuti Cauchi is a law firm serving successful entrepreneurs, business families and institutions using the financial centres of Malta and Cyprus, and their advisors around the globe. With offices in Malta, Cyprus and London, we advise clients seamlessly on their business and private legal needs both at home and abroad.

Multi-Disciplinary

Our unique **multi-disciplinary** set-up of over seventy lawyers, tax advisors, accountants, company administrators and relocation advisors allows us to provide the full spectrum of legal, tax, company formation, immigration, corporate relocation and fiduciary services to clients using Malta and Cyprus in international tax planning, cross-border business structuring and wealth management solutions.

Trusted Advisers

Our cross-functional approach appeals to discerning clients that range from High Net Worth individuals and families, entrepreneurs as well as blue chip companies. The firm serves as a **trusted adviser** to international law firms, tax advisers, accountants, private bankers and family offices worldwide.

We maintain **key strengths** in corporate law, international tax, intellectual property, immigration law, property law and trusts.

Despite being a **top five law firm by size**, the partners and seniors continue the firm's tradition of providing specialised legal services of unrivalled quality: responsively. Our advice is rendered more valuable through its delivery in a personalised environment built around our clients' personal or commercial realities.

Commercially Aware

The firm has built a name for serving **today's and tomorrow's industries** with significant commercial awareness, including the financial services, online gambling, pharma, life-sciences, digital games, aviation and super-yacht industries, combining specialist business law and international private wealth advice.

We are renowned for technical excellence, sensitivity and common sense.

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