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Malta Companies: A Summary of Maltese Company Law & Malta's Corporate Tax System

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1. EU compliant tax system

In 2007, Malta made the final revisions to its corporate tax system to remove the remnants of positive tax discrimination by extending the possibility to claim tax refunds to residents and non-residents alike. Certain features such as the participation exemption which serve to make Malta a more attractive tax planning jurisdiction were also introduced at this stage. Thus Malta presents an attractive, competitive, fully EU compliant tax system.

2. Maltese Corporate Vehicles

Limited Liability Companies:
- Public (plc);
- Private (Ltd).

Partnerships:
- en commandite the capital of which is divided into shares (treated as a company for tax purposes)
- en commandite the capital of which is not divided into shares;
- en nom collectif

3. Company Law Aspects

3.1. Capital Requirements
The minimum issued share capital for a private company is €1,164.69, at least 20%of which must be paid up on incorporation. Capital may be denominated in any foreign convertible currency. Tax is paid in the company's reporting currency and tax refund is received in the same currency. Companies may be set up with a variable share capital (SICAV).

3.2. Shareholders
The number of shareholders is normally two, however, companies may also be registered with a single shareholder. Shares may be held, amongst others, by individuals, corporate entities, trusts or foundations. Shares in Maltese companies may be held on behalf of the beneficiaries by Claris Capital Limited, our trust company, which is authorised by the Malta Financial Services Authority to act as trustee or fiduciary.

3.3. Objects
A Malta Company is very versatile and can be set up, amongst other things, to:
- provide licensed investment services
- receive commission / brokerage income;
- receive management, operational or consultancy fees;
- carry out e-commerce activities;
- carry out licensed online gaming/betting activities;
- own & licence patents, copyrights, trademarks, franchises, domain names and other intangible assets; own immovable property & project management;
- own and lease machinery, motor vehicles and trucks;
- hold assets of all kinds

3.4. Registered office
The company's registered office must be in Malta.

3.5. Directors and Secretary
A Malta company must have a minimum of one director and a company secretary. It is possible to have a corporate director, however, the company secretary must be an individual. In certain cases it is possible for a director who is an individual to act as company secretary. There are no requirements in relation to the residence of directors or company secretary, however, it is advisable to appoint Malta resident directors to ensure effective management and control in Malta. We are able to act as or recommend officers for client companies under our administration.

3.6. Meetings

A Maltese company must hold at least one general meeting every year.

3.7. Formation Procedure

The Memorandum and Articles of Association are presented to the Registrar of Companies for registration together with evidence that the paid up share capital of the company has been deposited in a bank account and a certificate of registration will be issued.

3.8. Incorporation Time-Scale

The incorporation process is relatively swift. It usually takes between 3 to 5 days, from the provision of all information, due diligence documents and remittance of funds. A 24 hour registration service may also be provided upon payment of an additional fee.

3.9. Accounting & Accounting Year

Annual audited accounts need to be prepared in accordance with International Financial Reporting Standards (IFRSs) and filed with the Registry of Companies where they may be inspected by the public. Maltese law allows a choice of financial year-end.

4. Company Tax System

The corporate tax rate currently stands at 35%.

4.1. Imputation System

Malta tax resident shareholders receive full credit for any tax paid by the company on profits distributed as dividends, thereby avoiding double taxation on that income. Excess imputation tax credits are refundable where the shareholder is liable to tax in Malta on the dividend at a rate which is lower than the company rate of tax (i.e. 35%).

4.2. Participation Exemption

Income or capital gains derived by Malta companies from *qualifying participating holdings* may be exempt from tax in Malta. An investment qualifies as a *participating holding* where:

(a) a company holds directly at least ten percent of the *equity shares* of a company whose capital is wholly or partly divided into shares, which holding confers an entitlement to at least ten percent of any two of the following ("*equity holding rights*"):

- (i) right to vote;
- (ii) profits available for distribution; and
- (iii) assets available for distribution on a winding up; or

(b) a company is an *equity shareholder* in a company and the equity shareholder company is entitled at its option to call for and acquire the entire balance of the equity shares not held by that equity shareholder company to the extent permitted by the law of the country in which the equity shares are held; or

(c) a company is an *equity shareholder* in a company and the equity shareholder company is entitled to first refusal in the event of the proposed disposal, redemption or cancellation of all of the equity shares of that company not held by that equity shareholder company; or

(d) a company is an *equity shareholder* in a company and is entitled to either sit on the Board or appoint a person to sit on the Board of that company as a director; or

(e) a company is an *equity shareholder* which holds an investment representing a total value, as on the date or dates on which it was acquired, of a minimum of one million, one hundred and sixty-four thousand euro (€1,164,000) (or the equivalent sum in a foreign currency) in a company and that holding in the company is held for an uninterrupted period of not less than183 days; or

(f) a company is an *equity shareholder* in a company and where the holding of such shares is for the furtherance of its own business and the holding is not held as trading stock for the purpose of a trade.

Equity shares refers to a holding of the share capital in a company which is not a property company and which entitles the shareholder to at least any two of the following three rights: the right to vote, the right to profits available for distribution to shareholders and the right to assets available for distribution on a winding up of the company.

The participation exemption may also apply to holdings in other entities such as a Maltese limited partnership, whose capital is not divided into shares, a non-resident body of persons which has similar characteristics, as well as a collective investment vehicle where the liability of the investors is limited provided the criteria for the application of the exemption are satisfied.

Capital gains derived from the disposal of such participating holdings may be exempt from tax in Malta in terms of the Participation Exemption provisions at the option of the Malta company. Where the Malta company receives dividend income from a participating holding such income may be exempt from tax in Malta also at the option of the company provided that the company in which the participating holding is held falls within one of the following safe harbours:

- it is resident or incorporated in the EU;
- it is subject to any foreign tax at a rate of at least 15%; or
- less than 50% of its income is derived from passive interest or royalties.

Where a participating holding does not fall within one of the safe harbours above, the income derived therefrom may nevertheless be exempt from tax in Malta if both the conditions below are satisfied:

- the equity shares held in the non-resident company do not represent a portfolio investment; and
- the non-resident company or its passive interest or royalties have been subject to tax at a rate which is not less than 5%.

4.3. 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.

The law requires refunds to be settled 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.

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

4.3.1. 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.

[1] A participating holding is amongst other things an investment in the equity of a company of at least 10% or an investment with a value of €1,164,000 held for an uninterrupted period of not less than 183 days.

[2] Resident or incorporated within the EU, subject to tax at a rate of at least 15% or does not have more than fifty per cent (50%) of its income derived from passive interest or royalties.

4.3.2. The 5/7ths refund

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

- passive interest or royalties[3]
- 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 in the hands of the shareholders.

4.3.3. 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:

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**

4.3.4. 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

5. 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)

5.1. Unilateral Relief

This mechanism provides a virtual double tax treaty between Malta and the rest of the world and allows a tax credit wherever foreign tax has been suffered, provided that the taxpayer can provide evidence to the satisfaction of the Commissioner:

- 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.

5.2. Tax Treaty Network

Malta has signed over 60 Double Taxation Treaties, for the most part based on the OECD model and including double taxation agreements with all the EU Member States.

[3] Interest or royalties are deemed to be "passive" where they are not derived directly or indirectly from a trade or business and have not suffered foreign tax directly, by way of withholding or otherwise at a rate of at least 5%

5.3. 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, Montenegro, Morocco, Netherlands, Norway, Pakistan, Poland, Portugal, 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
Mexico, Moldova, Ukraine.

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

Tax Information Exchange Agreements – signed but not in force
Macao

5.4. 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. The FRFTC mechanism assumes a foreign tax suffered of 25%. The company's net income grossed up by 25% FRFTC is subject to tax at 35% with the 25% credit being applied against the Malta tax due.

6. 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 survive 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.

7. Malta in the EU

As a member of the EU Malta has adopted amongst other 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.

8. Other Advantages

- No withholding taxes apply on distribution of the profits or dividends to the shareholders;
- Stamp duty and capital gains exemptions apply to the transfer of shares in a Malta company by non-residents;
- 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;

9. 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.