DOING BUSINESS IN MALTA
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INTRODUCTION

The aim of this publication, which has been prepared for the exclusive use of BDO Member Firms and their clients and prospective clients, is to provide the essential background information on setting up and running of a business in Malta, in compliance with legislation in force as at 31 May 2016. It is of use to anyone who is thinking of establishing a business in Malta as a separate entity, as a branch of a foreign company or as a subsidiary of an existing foreign company. It also covers the essential background tax information for individuals considering coming to work or living permanently in Malta.

This publication describes the business environment in Malta and covers the most common forms of business entity and the taxation aspects of running or working for such a business. For individual taxpayers, the important taxes to which individuals are likely to be subject are dealt with in some detail. The most important issues are included, but it is not feasible to discuss every subject in comprehensive detail within this format. If you would like to know more, please contact the BDO Member Firms with which you normally deal, who will be able to provide you with information on any further issues and on the impact of any legislation and developments subsequent to the date mentioned below.

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We work hard to understand our clients’ businesses and ensure that we match both our service offering and our people to their complex individual needs. We believe that providing our clients with access to experienced professionals who are actively engaged in addressing their tax and business issues is the most reliable way to provide exceptional service, always with a strong focus on trust and transparency.

Regardless of your location, size or international ambitions we can provide effective support as you expand into new areas of the world. In an ever-evolving economic environment, businesses need a global network that provides an exceptional bespoke service combined with local knowledge and expertise. BDO is uniquely positioned to serve this demand, providing effective support and a truly global integrated footprint.

The information in this publication is up to date to 31 May 2016.

Doing Business in Malta 2016 has been written by BDO Malta, the Maltese Member Firm of BDO. Its contact details may be found at the end of this publication.

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Brussels Worldwide Services BVBA
The Corporate Village, Elsinore Building
Leonardo Da Vincilaan 9 – 5/F
1935 Zaventem
Belgium

Tel: +32 2 778 0130 Fax: +32 2 778 0143
globaloffice@bdo.global
http://www.bdointernational.com
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BDO MALTA

BDO WORLDWIDE
THE BUSINESS ENVIRONMENT

1. GENERAL INFORMATION

1.1 Geography
Malta is a Member State of the European Union and an independent republic in the Commonwealth of Nations consisting of a small group of islands - Malta, Gozo, Comino, Cominotto, and Filfla – located in the Mediterranean Sea, south of Sicily. The area of the largest island, Malta, is 246 sq. km; Gozo covers 67 sq. km and Comino has an area of 3 sq. km. The total area is 316 sq. km. The capital and leading port is Valletta. The population of Malta is approximately 400,000.

1.2 History
Malta and Gozo have been inhabited for the past 7,000 years. The Islands have a long and varied history that goes back to prehistoric periods: Neolithic, Copper, and Bronze Age civilisations lasted more than 4,000 years; remains from these times include the impressive stone temples at Hagar Qim and a unique underground hypogeum.

The first known inhabitants were the Phoenicians who were present in the 9th century BC. Their Punic kinsmen, the Carthaginians, who were eventually conquered by the Romans in the 3rd century BC, followed them. Roman rule lasted until the 4th century AD. Arabs from North Africa occupied the Islands from the 9th to the 11th century until they were driven out in 1090 by the Norman Count Roger.

The Normans, Swabians, and Angevins followed for short periods until the beginning of the 14th century, when the Islands fell under Aragonese domination. In 1530 the King of Spain, Charles V, granted the Islands as a fief to the Order of the Knights of St John of Jerusalem.

The Knights of St John ruled the Islands for 268 years until 1798 when Napoleon Bonaparte drove them out and occupied Malta in the name of the French Republic. French occupation lasted two years until they were forced to surrender to the British forces. In 1800 Malta became part of the British Empire.

Malta attained its independence in 1964. Ten years later, in 1974 it was declared a Republic within the British Commonwealth. On 1 May 2004 the country became a member of the European Union.

1.3 Government and law
The influence of British rule in Malta has left its mark on the legal and political system.
Malta is a parliamentary democracy. The head of state is the President, who is appointed by the House of Representatives and whose role is merely that of a figurehead. General elections for the appointment of Members of the House of Representatives are held every five years. The Prime Minister is usually the leader of the party commanding the greatest measure of support in the House. The Prime Minister nominates ministers to the Cabinet from among the elected members. Various local administrative matters are delegated by specific legislation to local councils.

The legal structure is based on the civil law pattern of continental Europe, but most administrative, financial and fiscal legislation is based on British laws. There are three principal jurisdictions – civil (including commercial), criminal, and voluntary. There is one Court of Appeal for all jurisdictions. The Constitutional Court, however, is the ultimate competent court for judgments on the conformity of laws and administrative action with the Constitution. There are a number of administrative tribunals from whose decision an appeal can be made (usually on a point of law only) to the Court of Appeal.

Throughout the years, Malta has been regarded as a highly reputable international financial services centre. In this context, Malta has developed a comprehensive and flexible framework for financial services. This framework creates an attractive business climate and establishes appropriate regulatory structures to oversee international trade and the financial sector in Malta. The tax laws of Malta compliment the financial services and are intended to support the development of Malta as an international financial and business centre.

The laws of Malta have incorporated standards
equivalent to those of the EU with respect to the prevention of money laundering and insider dealing and conform in most respects to the EU standards for banking and investment management regulation.

1.4 Language and currency
The official languages are Maltese and English. The majority of Maltese speak English fluently and nearly all business is transacted in English.

The unit of currency in Malta is the Euro, which replaced the Maltese Lira as the official currency on 1 January 2008.

1.5 International time
Maltese time is Central European Time, which is one hour ahead of Greenwich Mean Time and six hours ahead of U.S. Eastern Standard Time. In line with Central European Time, Malta goes on summer time, which is one hour ahead of normal time, from the last week of March to the last week of October.

1.6 Competitive advantage
When analysing potential investment locations, one has to consider the number of advantages Malta has to offer to foreign investors, amongst which are:

- Its strategic location, which makes it an ideal base from which to approach the European and North African markets.
- The modern legal, economic, and business structures, which have been recently overhauled in line with EU regulations.
- Its stable political environment.
- Its stable economic environment, complemented by its highly credit worthy financial institutions.
- Language: the official languages are Maltese and English and the majority of Maltese speak English and Italian fluently (besides other languages). Nearly all business is transacted in English.
- Its highly educated and skilled work force. A high percentage of students further their studies up to tertiary education. Malta has maintained a competitive advantage in this area when one considers that labour costs are significantly lower than in most European states.
- The fiscal incentives, which will be dealt with later on.
- Its modern infrastructure, its natural harbours, the Malta Freeport (which is widely recognised as a high-profile transhipment hub), and its constantly upgraded telecommunications system.
- Its size and relatively short distances, practically making anywhere in Malta – including its harbours and airport – reachable within 30 minutes!

2. BUSINESS ENTITIES

2.1 Forms of business enterprise
The common types of business enterprise in Malta, whether for trading within Malta or elsewhere, are:

- The partnership en nom collectif.
- The partnership en commandite.
- The limited-liability company (public or private).

It is also possible to establish companies to be used as investment vehicles, namely:

- The investment company with fixed share capital (INVCO).
- The investment company with variable share capital (SICAV).

Persons setting up trading operations within Malta normally do so through a limited liability company, a branch of a foreign company or (occasionally and particularly in professional fields) a partnership. Persons setting up trading operations through, but essentially outside, Malta normally do so through the establishment of a limited liability company.

2.2 Partnerships en nom collectif and en commandite
Almost any form of business may be carried out in Malta by a partnership.

A partnership en nom collectif may be formed by two or more partners and operates under a partnership name. Its obligations are guaranteed by the unlimited, joint, and several liability of all the partners.

A partnership en commandite operates under a partnership name and has its obligations guaranteed by the unlimited, joint, and several liability of one or more partners, called general partners, and by the liability, limited to the amount, if any, unpaid on the contribution, of one or more partners, called limited partners.

As from 2015, new mechanisms are available providing for limited liability also for the general partners.
2.3 Public and private companies

Companies in Malta are formed by incorporation and registration under the Companies Act 1995. This law contains detailed provisions dealing with the incorporation, management and administration, and winding-up or dissolution of companies. It also contains mandatory provisions concerning the issue, format, and content of financial statements and requires that a public file of information about the company be maintained at the Registry of Companies. Every company has a memorandum and articles of association that sets out its constitution and rules for its management and administration. A company may be either a public or a private company.

A private company is a company that, by its memorandum and/or articles:
• restricts the right to transfer its shares;
• limits the number of its members to 50;
• prohibits any invitation to the public to subscribe for any shares or debentures of the company;
• has a minimum share capital of EUR 1,164.69, with not less than 20% of the nominal (par) value of each share paid up; and
• must include the designation "Limited", which may be abbreviated to "Ltd", in the last part of its name.

A public company is a company that is not a private company limited by shares and meets the following requirements:
• its memorandum of which states that the company is to be a public limited company;
• it has registered itself as such;
• it has share capital of at least EUR 46,587.47, with the nominal (par) value of each share at least 25% paid up; and
• it includes the designation “Public Limited Company” (this may be abbreviated as “plc”) in its name.

Only a public company may offer shares or debentures to the public, though these need not necessarily be quoted or dealt with on a stock exchange.

2.4 Registration and annual costs

Registration fees (payable on incorporation) and annual fees based on the authorised share capital of the company are set out in the tables below:

<table>
<thead>
<tr>
<th>Authorised share capital</th>
<th>Initial registration fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to €1,500</td>
<td>€245</td>
</tr>
<tr>
<td>From €1,501 to €5,000</td>
<td>€245 plus €15 for every €500 or part thereof in excess of €1,500 or part thereof</td>
</tr>
<tr>
<td>From €5,001 to €10,000</td>
<td>€350 plus €20 for every €1,000 or part thereof in excess of €5,000</td>
</tr>
<tr>
<td>From €10,001 to €50,000</td>
<td>€450 plus €20 for every €2,500 or part thereof in excess of €10,000</td>
</tr>
<tr>
<td>From €50,001 to €100,000</td>
<td>€770 plus €20 for every €10,000 or part thereof in excess of €50,000</td>
</tr>
<tr>
<td>From €100,001 to €250,000</td>
<td>€870 plus €10 for every €15,000 or part thereof in excess of €100,000</td>
</tr>
<tr>
<td>From €250,001 to €500,000</td>
<td>€970 plus €10 for every €10,000 or part thereof in excess of €250,000</td>
</tr>
<tr>
<td>From €500,001 to €1,000,000</td>
<td>€1,220 plus €20 for every €20,000 or part thereof in excess of €500,000</td>
</tr>
<tr>
<td>From €1,000,001 to €2,500,000</td>
<td>€1,720 plus €10 for every €50,000 or part thereof in excess of €1,000,000</td>
</tr>
<tr>
<td>From €2,500,001 upwards</td>
<td>€2,250</td>
</tr>
</tbody>
</table>
An annual return is to be made up to the date of the anniversary of the company’s registration. This, together with the relevant annual registration fee, is filed with the Registrar of Companies within 42 days from such date.

2.5 Capital structure
A company’s authorised share capital and division of that capital into shares should be set out in the company’s memorandum of association. Shares of no par value are not permitted. Shares may be of different classes having different voting, dividend, and other rights. Ordinary shares usually have voting rights with no restriction on dividend rights. Preference shares usually have the right to a fixed preferential dividend with no voting rights unless dividends are in arrears or some specified circumstances exist. A company may also issue redeemable shares of any class. There are, however, many variations from this normal pattern, including additional classes of shares with special rights.

A company may have its share capital denominated in any currency. The company’s financial statements should be drawn up in the same currency in which its share capital is denominated.

2.6 Debentures
The term “debentures” includes: debenture stock, bonds, and other securities of a company, whether constituting a charge on the assets of the company or not. In practice, a debenture is normally issued as a security for a loan and is an instrument executed under the seal of the company, charging the whole or part of its undertaking or specific property in favour of the holder, to secure the sum loaned and to provide for the payment of interest at a specified rate until the principal has been repaid. Debentures are usually redeemable at a specified date. They are normally transferable and, if issued by a public company, may be quoted on the Stock Exchange.

2.7 Relationship of shareholders, directors, and officers
The conduct of the business of the company is in the hands of the directors. There is no statutory requirement that a director must be a shareholder, and companies sometimes require a director to hold a specified number of shares, termed a “share qualification”. The directors are invariably appointed by the shareholders to hold office for a period specified by the articles of association.

The company’s articles of association contain provisions dealing with the powers and duties of directors. The obligations imposed on directors by company law, particularly in relation to public companies, include those designed to ensure that proper information about the company is made available to the general public and to potential investors. Directors must have regard to the interest of employees as well as those of the shareholders.

Every company must have a secretary who may also be a director. The secretary is an officer of the company and is usually regarded as being the officer primarily responsible for seeing that the company complies with the requirements of company law.

<table>
<thead>
<tr>
<th>Authorised share capital</th>
<th>Annual registration fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does not exceed €1,500</td>
<td>€100</td>
</tr>
<tr>
<td>Exceeds €1,500 but does not exceed €5,000</td>
<td>€140</td>
</tr>
<tr>
<td>Exceeds €5,000 but does not exceed €10,000</td>
<td>€160</td>
</tr>
<tr>
<td>Exceeds €10,000 but does not exceed €50,000</td>
<td>€350</td>
</tr>
<tr>
<td>Exceeds €50,000 but does not exceed €100,000</td>
<td>€400</td>
</tr>
<tr>
<td>Exceeds €100,000 but does not exceed €250,000</td>
<td>€600</td>
</tr>
<tr>
<td>Exceeds €250,000 but does not exceed €500,000</td>
<td>€800</td>
</tr>
<tr>
<td>Exceeds €500,000 but does not exceed €1,000,000</td>
<td>€900</td>
</tr>
<tr>
<td>Exceeds €1,000,000 but does not exceed €2,500,000</td>
<td>€1,200</td>
</tr>
<tr>
<td>Exceeds €2,500,000</td>
<td>€1,400</td>
</tr>
</tbody>
</table>
2.8 Relocation of companies to/from Malta

It is possible for companies to relocate from a foreign jurisdiction to Malta and vice versa. A foreign body corporate relocating to Malta must be formed and registered under the laws of an approved jurisdiction, must be similar in nature to companies registered under the laws of Malta, and the procedure should be allowed in terms of the law of that country and of the company's statute. Similarly, a company registered under the Malta Companies Act may request the deletion of its Maltese registry to continue as a company incorporated in another country as long as the law of that country allows the procedure.

2.9 Branch of a foreign corporation

A company incorporated outside Malta that establishes a place of business in Malta must register with the Registrar as an overseas company.

2.10 Sole proprietorship

There are no particular requirements relating to the registration or organisation of a sole proprietorship. The provisions of the Commercial Code as regards commercial records and bankruptcy apply to sole proprietors.

2.11 Reporting requirements

All limited companies must file annual financial statements with the Registrar of Companies. Further details on filing requirements of financial statements are set out in Section 3.6 (Form and content of financial statements) on page 10. Upon each anniversary of its registration, a company must also file an annual return with the Registrar of Companies. This must contain a list of shareholders, particulars of the directors and secretary, and certain other statutory information. Generally, partnerships are not subject to the same degree of statutory control over their constitution and administration as companies are and partnerships are not subject to the same level of public disclosure. For example, there is no public filing of their accounts.

An overseas company is required to comply, as much as possible, with the rules regarding financial statements applicable to Maltese companies.

3. LABOUR RELATIONS AND WORKING CONDITIONS

3.1 Availability of labour

Malta's estimated labour force stands at 170,500. A wide range of skills is available, supported by highly educated entrants from educational establishments each year. Because of the size of the country, mobility of labour presents no difficulties.

3.2 Employer/employee relations

Legislation provides safeguards for employees in terms of their employment and working conditions. The legislation:

- requires an employer to give an employee written information about terms and conditions of employment;
- lays down the right of both employers and employees to minimum periods of notice when employment is to be terminated; and
- provides maternity rights for women employees, which include protection from dismissal because of pregnancy, maternity leave, and the right to return to work after the baby is born.

3.3 Trade unions

In general, there is no legal or any other requirement in Malta to join a trade union. In some industries, however, there is a traditional attitude amongst the workforce that employees should join a union.

3.4 Employee participation

There is no legal requirement for:

- employees to be represented on the boards of directors of companies other than on certain specified Government-owned companies;
- profit sharing; or
- works councils
3.5 Equal opportunities

No discrimination can be made on the basis of gender or race. Maltese legislation requires equal pay for men and women, not only for equal work, but also for work that can be deemed to be of equal value. Financial incentives are offered to the private sector to encourage employment of disadvantaged persons.

3.6 Working conditions

Wages - As from 1 January 2015, the national minimum weekly wage for persons aged 18 and over is EUR 168.02.

Social security costs - In addition to wages, the employer must pay social security costs (see Section 3 (Social security contributions) on page 35).

Statutory bonuses - There is a statutory bonus of EUR 135.10 payable half-yearly in June and December. There is also a statutory allowance of EUR 121.16 payable half-yearly in March and in September.

Hours worked - The standard working week is 40 hours.

Paid holidays - The basic entitlement is 24 working days per annum or proportionally less where the service is shorter. Additionally, there are 14 statutory public holidays for which employees are entitled to be paid. Public holidays falling on a weekend are not added to the leave entitlement for the year.

Sick leave - The statutory entitlement to sick leave is 15 days on full pay and 36 days on half pay.

Period of probation - The first six months of every contract of service is deemed to be a probationary period unless a shorter period is agreed. In the case of contracts of service of employees holding technical, executive, administrative, or managerial grades and whose wages are at least double the minimum wage, the period of probation is 12 months unless otherwise agreed.

Termination of employment - Employment under a contract of service for an indefinite period may be terminated by the employer either during the period of probation, in which case the employer is not required to state any reason for the termination, or on grounds of redundancy or for a good and sufficient cause.

If the employment is terminated during the period of probation and if the employee has been in employment for more than one month, the employer must give a week’s termination notice. An employer terminating a contract on grounds of redundancy must give a notice of termination of a period ranging from one to 12 weeks, depending on the time for which the employee had been employed with that employer. If the employer fails to give the statutory notice the employee will be liable to pay the employee the full wages for the notice period.

A dismissal on grounds of redundancy may only be made on a last in first out basis, and the employee will have the right to re-employment at the same terms and conditions if a vacancy in the same post arises within one year from the termination.

The law specifies certain situations that may not be set up as a “good and sufficient cause“ for the termination of the employment, such as membership in a trade union or pregnancy of the employee.

Legislation also gives protection against unfair dismissal by providing a system under which an employee may complain against as employer and obtain reinstatement, re-engagement or compensation.

An employee may at any time terminate a contract for an indefinite period without giving any reason. If he or she has been employed for more than one month he or she is required to give a notice of termination of a period ranging from one to 12 weeks, depending on the time for which the employee has been employed.

If any of the parties to a contract for a definite period terminates the contract before the expiration of that period without a good and sufficient cause, they become liable to pay to the other party half of the wages that would have been payable for the unexpired period.

Health and safety at work - It is the duty of every employer to ensure that the workplace is free from unnecessary hazards to health and from unavoidable dangers to the physical and psychological integrity of workers. It is the duty of every worker to safeguard the health and safety of other workers as well as their own.
FINANCE AND INVESTMENT

1. REGULATORY AGENCIES

1.1 Regulation of business
Responsibility for the legal framework for the regulation of industry and commerce rests with the Department of Trade. The department is responsible for company law, patent, trademark, and copyright matters. Administration of the Companies Act vests with the Registry of Companies at the Malta Financial Services Authority.

1.2 Monopolies
There is no legislation for the control of monopolies, mergers, or restrictive trade practices. There is, however, the Competition Act 1994, which regulates competition and provides for fair trading in Malta.

1.3 Import controls
Most categories of goods may be imported into Malta but the importation of a limited range of goods is restricted. The restriction applies mainly to explosives, firearms, and ammunition. There are also restrictions in respect of animals, plants, and certain other items, which could be dangerous to health, safety, or public morals.

1.4 Exchange control
There are no exchange control restrictions except that residents of Malta are not permitted to enter into contracts of long-term insurance with insurance undertakings not established within an EEA country.
1.5 Patents, trademarks, and copyright

Patents, trademarks, and copyright are protected as follows:

- A patent is valid for 20 years from the filing date of the application. The maintenance of the patent is subject to the payment of the prescribed fee in respect of the fifth year and each subsequent year thereafter.
- A trademark is registered initially for a period of 10 years and is renewable for successive periods of 10 years.
- Copyright exists without the necessity of application or registration in respect of original literary, dramatic, musical, and artistic work. Protection is provided for the life of the author plus 70 years.

Malta is a member of the Paris Convention for the Protection of Industrial Property. It is also a member of the Berne Copyright Convention for the protection of literary or artistic works.

1.6 Data protection

The right to privacy is a fundamental human right, which is safeguarded in Malta’s Constitution. The Data Protection Act 2001 came into force on 15 July 2003. It provides for the protection of individuals against the violation of their privacy by the processing of personal data and for matters connected and ancillary therewith.

1.7 Work permits

Foreign nationals are allowed to work in Malta provided that their employers have been issued an employment licence for this purpose. Applications for permits must be made in advance of the proposed employment date by the employer and are issued to the employer for onward transmission to the worker.

Employment licences are granted with relative ease when Malta is being used as a base for international activities. Otherwise, the policy is to grant employment licences only in exceptional cases. However, upon application, European Union citizens are automatically granted an employment licence.

2. BANKING AND LOCAL FINANCE

2.1 The banking system

The Malta Financial Services Authority (MFSA) is responsible for supervising the banks and financial institutions taking deposits from the public. Banks and financial institutions are required to submit regular periodic returns containing information about their business to the MFSA.

The role of the Central Bank with respect to the banking system is merely to maintain price stability and a sound financial system in the country, as well as carrying out basic functions of controlling the issue of bank notes, acting as a banker to banks, and managing foreign exchange reserves.

There are four commercial banking groups with branches throughout the country. These include also merchant banks that provide a range of financial services, including corporate financial advice, and hire-purchase finance.

Sources of short and long-term borrowing and access to venture and development capital are provided by the banking system and the financial institutions mentioned above. Deposit facilities denominated in Euro and in major foreign currencies are available and no tax at source is applicable on interest earned by non-residents.

2.2 Financial markets

The Malta Stock Exchange is, at present, the only recognised investment exchange in Malta. Its administration is subject to the regulation of the MFSA, and is entrusted to the Stock Exchange Council. Listed companies include banks, the telecommunications and airport operators, and private organisations mainly active in the hospitality and leisure, beverage, and retail sectors. Trading is carried out daily by licensed stockbrokers who act as agents for their clients.

The Stock Exchange provides facilities for new issues of commercial and Government securities.

3. ACCOUNTING AND AUDIT REQUIREMENTS

3.1 Statutory requirements

As discussed earlier, partnerships and sole traders are under no statutory obligation to prepare annual accounts or to have them audited (though some form of accounts is usually required for fiscal purposes).
Companies incorporated under the Companies Act are, however, subject to extensive statutory requirements, which are described below.

### 3.2 Accounts and directors’ report

The directors must prepare reports and lay them before the shareholders for approval in general meeting, which must be held within:

- ten months after the end of the relevant accounting reference period for a private company; and
- seven months after the end of that period for a public company.

Different provisions apply for a company's first annual general meeting and where a company’s accounting period has been shortened due to a change in the accounting reference date. A copy of the signed accounts must be filed with the Registrar of Companies within 42 days of the general meeting.

The accounts must comprise:

- a statement of comprehensive income covering the financial year;
- a statement of financial position at the end of the financial year; and notes giving certain supplementary information and disclosures.

The accounts must give a true and fair view of the company’s affairs and be accompanied by the auditors’ report. The audited accounts and a directors’ report must be sent to the shareholders at least 21 days before the annual general meeting.

Companies that fall within certain parameters and are therefore treated as “small”, may draw up abridged accounts.

In addition to accounts showing the company’s position as a separate entity, a company with subsidiaries must submit group accounts dealing with the company and its subsidiaries. The group accounts are in the form of consolidated accounts.

### 3.3 Books and records

Companies incorporated under the Companies Act are required to keep proper accounting records. They must contain the information necessary to disclose with reasonable accuracy, at any time, the company’s financial position at that time, and to enable the directors to prepare accounts in compliance with the requirements of the Companies Act 1995. The accounting records must be preserved for 10 years. The accounting records must record:

- all sums of money received and expended, and the matters in respect of which the receipts and expenditure take place;
- all sales and purchases of goods; and
- the assets and liabilities.

The accounting records must be kept at the company’s registered office or at such other place as the directors think fit. If the accounting records are not kept in Malta, accounts and returns that disclose the financial position of the business at intervals not exceeding six months must be sent to, and kept at, a place in Malta, to enable a statement of financial position and a statement of comprehensive income to be prepared.

### 3.4 Auditors and audit requirements

Companies incorporated under the Companies Act must appoint an independent auditor.

To be qualified for appointment as auditor, a person must hold a warrant to practice the profession of an accountant in terms of the Accountancy Profession Act and a practicing certificate in the field of auditing.
The following are barred from being appointed auditor:

- an officer or servant of the company;
- a person who has been an officer or servant of the company within a period in respect of which accounts fall to be audited by him or her if he or she were appointed auditor of the company;
- a parent, spouse, brother, sister, or child of an officer of the company;
- a person who is a partner, or in the employment of an officer, or servant of the company; and
- a body corporate.

Most companies appoint practising accountants or firms of accountants as auditors and, in addition, frequently look to them for other services, including advice on taxation and other financial matters.

The auditors are required to make a report to the shareholders on the accounts examined by them and on every statement of financial position, statement of comprehensive income and all group accounts laid before the company in general meeting. The auditors’ report, which must be drawn up in accordance with International Standards on Auditing, must note:

- whether the accounts have been properly prepared in accordance with the Companies Act, and in particular whether a true and fair view is given:
  - in the case of an individual statement of financial position, of the state of affairs of the company as at the end of the accounting period;
  - in the case of an individual statement of comprehensive income, of the profit or loss of the company for the accounting period; and
  - in the case of consolidated accounts, of the state of affairs at the end of the accounting period and the profit or loss for the accounting period of the undertakings included in the consolidation as a whole, so far as it concerns members of the company; and
- whether the information given in the directors’ report for the accounting period for which the annual accounts are prepared is consistent with those accounts.

In preparing his or her report, the auditor is to carry out such investigations as will enable the auditor to form an opinion as to:

- whether proper accounting records have been kept by the company and proper returns adequate for the audit have been received from branches not visited by the auditor; and
- whether the company’s individual accounts are in agreement with the accounting records and returns.

If the auditor is unable to obtain all the information and explanations, which to the best of the auditor’s knowledge and belief are necessary for the purpose of the audit, this fact is to be stated in the report.

3.5 Accounting profession

The Accountancy Profession Act regulates the accounting profession. As stated above, no one is allowed to practise as an auditor in Malta unless the appropriate practising certificate issued by the Accountancy Board is held. Most practising accountants in Malta are members of one or more accounting bodies such as:

- The Malta Institute of Accountants;
- The Association of Chartered Certified Accountants; and
- The Institute of Chartered Accountants in England and Wales.

3.6 Form and content of financial statements

In general, the disclosure requirements for financial statements are set out in the Companies Act, which reflects the requirements of the EC Fourth Directive. Financial statements are drawn up on the basis of International Financial Reporting Standards.

There is a choice of format for both the statement of financial position and the statement of comprehensive income. The statement of financial position has to show assets, liabilities, and provisions under headings and in the order required by the Companies Act. The reporting company is at liberty to expand the required analysis but must give the prescribed minimum of information, except that classification, which is immaterial in amount, may be combined with another classification.

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There are four permitted types of profit and loss accounts, each giving different information. These formats are given in the Third Schedule to the Companies Act.

Companies are required to disclose accounting policies followed in dealing with items that are judged to be material or critical in determining their profit or loss for the year and in stating their financial position. These items include depreciation of fixed assets, stocks and work-in-progress, treatment of goodwill and other intangible assets, long-term contracts, deferred taxation, and the translation of foreign currencies. Comparative amounts for the preceding financial year must be shown for all items in the statement of
financial position, statement of comprehensive income and the notes thereto.

The Companies Act lays down certain minimum requirements for information to be given in the notes to the financial statements themselves. The information covers a large number and variety of matters, such as accounting policies, departure from generally accepted accounting principles, fixed assets, purchase commitments, contingent liabilities, transactions with directors and their connected persons, and particulars of subsidiary and related companies.

Companies with shares quoted on the Stock Exchange are required to provide shareholders with preliminary announcements of their six-monthly, as well as annual, profits. For these purposes, only certain significant figures need to be given, and they need not be audited.

3.7 Book and tax differences

In general, tax laws have little effect on accounting methods. Business profits for tax purposes are determined by reference to the accounts prepared based on recognised accounting principles, but such profits are subject to many statutory adjustments, so that, for example, book depreciation of fixed assets must be ignored and the statutory capital allowances for tax substituted.

Deferred taxation is to be accounted for on all timing differences to the extent that it is probable that they will be reversed and a liability to tax will arise in the foreseeable future.

4. INVESTMENT OPPORTUNITIES

4.1 The economy

Malta is an example of a small open economy, which is characterised by the size of the contribution made by the tourism and manufacturing industries and services to national output and by the importance of international trade. Traditionally, the Maltese economy was based on that of a military base but in the mid-1950s the Government embarked on a policy of industrialisation mainly by offering incentives to foreign manufacturers to locate in Malta with the aim of increasing employment opportunities. This policy has been successful in attracting labour-intensive industries and in recent years it has been successful in attracting the more technically advanced industries.

4.2 Tourism is a mainstay of the Maltese economy

The pattern of ownership in industry is varied. Most manufacturing is in the hands of private enterprise. Direct state intervention is in most cases affected through special state-owned bodies set up to deal with a particular activity. The most important state-owned bodies are those that operate nationalised industries, for example, electricity, gas, airlines, and telecommunications. However, in recent years, the government has adopted a privatisation policy in order to boost the role of the private sector in economic development.

The principal form of public/private sector cooperation is in the assistance given by specially constituted government bodies to promote industrial investment and the export of goods made in Malta. Malta Enterprise (ME) was established in 2003 to promote optimal enterprise growth in manufacturing and related services, excluding retail, tourism, and financial services.

4.3 Basic resources

Malta has no natural resources. The main resources are its sunshine, history, and the level of education of its workforce.

4.4 Foreign trade and balance of payments

With no natural resources, Malta has always been an importer on a large scale, relying for its prosperity on achieving an acceptable level of exports. The European Union is Malta’s largest market.

4.5 Investment incentives

Tax and other incentives to promote industrial activity in Malta have existed under various laws and schemes since the late 1950. They were essential for creating a new basis for Malta’s economic activity once it no longer served as a British and NATO naval base. The main attractions were tax holidays and low labour costs, complemented by a favourable double taxation treaty regime. The type and the focus of the incentives changed from time-to-time in line with local and international developments.

The main industrial incentives are today contained in the Malta Enterprise Act, which intends to encourage and promote investment in Malta. Other incentives are also contained in the Business Promotion Act (BPA) and subsidiary legislation related to it, but these are expected to become subsidiary legislation issued in regards of the Malta Enterprise Act.
The incentives are targeted principally toward companies carrying on manufacturing and other industrial activities or services of an industrial nature but also apply to various other sectors. These sectors include, apart from a number of manufacturing activities, services related to computer software, electronic and electronic access systems, research and development, waste treatment, biotechnology, Freeport activities, and film production.

The main industrial incentives are subject to the approval of the Malta Enterprise Corporation (MEC), which is an autonomous government agency. In appraising a project proposal, the MEC takes into account various factors including its viability, the processes involved, the size of the capital investment, the sources of finance, and the employment to be generated. For the purposes of industrial incentives, Malta and Gozo are considered one region but industry in Gozo is given added benefits to help neutralise the extra costs incurred because of freight and accommodation expenses. Factories are concentrated in a number of industrial estates.

Investment opportunities are also available in other sectors including shipping, Freeport activities, and financial services. Below we discuss some of the main incentives currently provided by the relevant legislation related to these industries.

5. TAX INCENTIVES – MALTA ENTERPRISE ACT

5.1 Investment tax credits

The main tax incentives provided under the Malta Enterprise Act, which are targeted primarily toward manufacturing industries but are also made available to certain other sectors upon pre-approval by the MEC, consist of investment tax credits (ITCRs). These are credits that can be deducted by the company from the tax due on chargeable income. When the credits for any year cannot be fully utilised, the excess may be carried forward to subsequent years. Amounts carried forward are increased by a prescribed percentage per annum.
Two types of ITCRs are available:

- ITCRs calculated as a percentage of a company’s expenditure on qualifying tangible fixed assets or in the acquisition/development of intangible assets; and
- ITCRs calculated as a percentage of wage costs for the first two years of employment of any person for whom a job is created in Malta as a result of an investment project.

For projects that provide a significant contribution to the development of the Maltese economy, at the discretion of the MEC, the entitlement to ITCRs may exceptionally be converted to other forms of aid, such as cash grants.

Dividends distributed out of profits relieved from tax by ITCRs do not attract any further tax at any level up to and including the ultimate shareholders.

5.2 Research and development tax credits

Enterprises investing in research and development activities leading to the development of new or significantly improved products, processes, or services may also qualify for tax credits calculated on the basis of qualifying research and development expenditures, subject to conditions. Tax credits may also be available to certain companies upon registering intellectual property attained through their research and development projects.

6. NON-TAX INCENTIVES UNDER THE MALTA ENTERPRISE ACT

Cash grants - Subsidiary legislation issued related to the Malta Enterprise Act provides a system of different cash grants for undertakings that carry on, or intend to carry out, an activity that the MEC deems may contribute to the economic development of Malta. These grants may be provided to partially finance expenditures in circumstances where the qualifying company or undertaking requires assistance, including:

- undertaking research and development activities;
- participating in trade fairs, trade missions, and other events;
- setting up business development projects;
- engaging advisors in a particular field; and
- supporting or developing international competitiveness

Cash grants may also be provided to certain small undertakings for the acquisition of tangible or intangible assets or the procurement of certain services during their start-up years.

Further incentives - The Malta Enterprise Act empowers the Minister responsible for Malta Enterprise to implement other promotional measures subject to conditions that may be deemed appropriate. This allows for the introduction of new incentives by legal notice (subsidiary legislation).
7. NON-TAX INCENTIVES UNDER THE BUSINESS PROMOTION ACT

Companies whose activities are treated as qualifying activities under the BPA may also qualify for the following non-tax incentives:

Child day care centres - Companies may benefit from subsidised rent on premises used to house child day-care centres and assistance in financing the costs to set up and operate such centres.

Soft loans and loan subsidies - Soft loans may be granted to a business carrying on the operation of a hotel for the acquisition of fixed assets in an investment programme aimed at the conservation of energy or water. Loans of up to 75% of qualifying expenditure may be granted by Malta Enterprise at a minimum rate of interest equal to the official Central Bank of Malta interest rate less 2.5%. Certain conditions as to the security required and repayment programme apply. Malta Enterprise may subsidise the interest rate payable by the company or provide guarantees, on loans taken out from financial institutions to finance qualifying expenditure.

Training grants - Malta Enterprise may pay training grants to companies carrying on qualifying activities. These range from 35% to 80% of the eligible costs incurred.

Factories - Malta Enterprise assists prospective investors in finding suitable factories in Malta’s industrial estates and in structural works required to customise a factory to the investor’s needs.

8. OTHER INCENTIVES

Assistance to exporters - The MEC also serves as the national focal point for trade promotion and export development. In this capacity, it has the role of acting as adviser to the government on international trade matters, negotiating and managing international trade agreements, carrying out trade research, product and market development, and assisting firms in export promotions.

Free-trade zones - The Freeport is a customs-free zone located around a developed harbour in the southern part of the island.

Seed Investment programme – As a measure to assist start-ups, tax incentives will be introduced in the form of tax credits for investors, equivalent to the level of share capital invested in a company, up to a maximum of €250,000 per annum.

International financial centre operations - Maltese law provides for a favourable fiscal framework for the provision of financial services, and endeavours to establish Malta as an attractive, regulated international business centre. Details on the tax provisions applicable to Maltese companies carrying on international operations are provided in Section 6 (International aspects) p.24. The regulator of financial services in Malta is the Malta Financial Services Authority (MFSA). The Authority provides a “one-stop shop” for all financial-services matters.

The Investment Services Act (ISA) regulates the carrying on of the entire range of investment business in Malta, particularly Collective Investment Schemes (CISs). The regulatory structure is comprehensive, covering dealing, management, administration, custody, and investment advice. A license from the MFSA is necessary to provide investment services and to operate a CIS in, or from, Malta or as an entity set up under Maltese law. Persons dealing in securities quoted on the Malta Stock Exchange are also subject to the rules and bylaws of the Exchange. An attractive tax regime exists for CIS and fund-management companies licensed by the MFSA.

The Special Funds (Regulation) Act is intended to facilitate the establishment of retirement arrangements. It provides a regulatory framework for:

- The arrangement pursuant to which an employer promises employee retirement benefits (Retirement Scheme).
- The types of funds (Retirement Funds) required to be used as investment vehicles by a Retirement
Under Maltese law, a Retirement Scheme is a contract between the Contributors (employer) and the Beneficiaries (members of the scheme eligible for benefits after retirement, permanent invalidity, or death.) Such schemes have to be legally registered.

A Retirement Fund is a collective investment company with fixed or variable share capital incorporated under the Companies Act 1995 that is set up for the principal purpose of holding and investing the Contributions made to one or more Retirement Schemes.

The law also makes reference to Overseas Retirement Plans - these are bona fide schemes or arrangements, organised under the laws of a country outside Malta, which govern the rights and responsibilities of the parties related thereto, and under which payments are made to Beneficiaries for the principal purpose of providing retirement benefits. An Overseas Retirement Plan does not require registration under the law. However, it may either decide to establish a Retirement Fund registered under the law or else invest its Contributions in an already established Retirement Fund registered under the law.

The Companies Act provides for, amongst other matters, the setting up of investment companies with variable share capital (SICAVs) and companies with share capital denominated in a foreign currency.

Moreover, Malta is committed to further expanding as an international maritime service centre. This commitment manifested by the maritime hub plan, a continuous development of what already is a sophisticated legal and financial regime, and also by the country’s huge investments in infrastructural services.

The Malta flag ensures peace of mind for registered yacht owners and yacht management companies and it is this very sense of security that makes the Malta flag an ever more attractive proposition.

The European Commission has opened an in-depth investigation to examine whether the Maltese tonnage tax scheme is compatible with EU state aid rules.

9. SHIPPING

Due to its strategic and central position within the major Mediterranean sea route, Malta offers a wide range of international maritime services including an active and reputable International Ship Register, which currently ranks as one of the largest merchant flags in Europe and is ranked eighth worldwide.

Be it yacht, super-yacht, cruise liner, or cargo vessel, even if previously registered under another jurisdiction, these can all be registered under the Malta flag, provided they are wholly-owned by Maltese citizens or shipping companies registered in Malta.

International owners may also register vessels under the Malta flag, provided that they appoint a resident agent in Malta. No restrictions on the nationality of shareholders and directors are imposed when forming a Maltese shipping company.

The European Commission has opened an in-depth investigation to examine whether the Maltese tonnage tax scheme is compatible with EU state aid rules.

10. CORPORATE TAXATION

1. CORPORATE INCOME TAX

1.1 Type of tax system

Malta currently operates a full imputation system of taxation, which grants full relief from corporate tax on any profits distributed as dividends by a company. The tax paid by the company is available as a credit to its shareholders when distributions are made to them. As a result, shareholders are not subject to any further tax upon dividends, since the highest rate of taxation for individuals is equal to the corporate tax rate in Malta, which currently stands at 35%.

Malta’s full imputation system of taxation and the income tax refund provisions contained in the legislation make Maltese companies efficient vehicles for non-resident shareholders.

Supporting the tax regime are many attractive and wholly compatible double tax treaties, as well as other methods for relieving double taxation on cross-border transactions.

Dividends are taxed on the gross amount of the dividend at personal rates. On the other hand, the shareholder is credited with the tax paid by the company on his or her share of the dividend.

There is also a final withholding tax on certain investment income, such as interest on local bank accounts and Government securities paid to Maltese individuals and companies. Under the final withholding tax system, the payer deducts tax at the rate of 15%.
which is remitted to the Commissioner of Inland Revenue without disclosing the recipient’s identity. Where tax has been deducted at source, Maltese taxpayers have no further tax liability on the income received and individuals are not required to disclose such sums on their tax returns unless they wish to do so, in which case they are taxed at normal rates with a credit for the tax deducted at source.

All Maltese taxpayers, however, have the right to elect to have interest paid to them gross, in which case they must disclose such income on their tax return and pay income tax at the normal rates applicable.

1.2 Taxable persons

Any company resident in Malta is subject to income (corporation) tax on its worldwide profits. A non-resident company is subject to income (corporation) tax only if it carries on a trade in Malta through a branch or permanent establishment. It is then liable, subject to any double taxation relief, for tax on any trading income arising directly or indirectly through, or from, its permanent establishment.

1.2.1 Residence

Companies incorporated under Maltese laws are automatically deemed to be resident and domiciled in Malta for tax purposes. Such companies are taxed on their worldwide income. Companies incorporated under foreign laws are regarded as resident in Malta in those cases where their control and management are exercised in Malta. These companies are subject to tax on a source and remittance basis i.e. subject to tax on Malta source income (including capital gains) and on income arising outside Malta (excluding capital gains) and remitted to Malta.

Companies that are not resident in Malta are taxable on chargeable income and capital gains arising in Malta, although a number of exemptions may apply in respect of certain income.

Companies that are redomiciled to Malta from another jurisdiction should be considered incorporated in Malta from the date of redomiciliation and should be deemed to be resident and domiciled in Malta with effect from such date.

The chargeable income of a company, which includes its taxable income and capital gains, is taxed at 35%.

1.3 Taxable Income

1.3.1 General

Under the Income Tax Act (ITA), any person (whether a legal person or an individual) who is both domiciled and ordinarily resident in Malta is subject to the worldwide basis of taxation. A company that is incorporated in Malta is considered to be both ordinarily resident and domiciled in Malta. A company incorporated outside Malta is considered resident in Malta only if the management and control of such company is exercised in Malta.
Companies are required to allocate their distributable profits for each financial period, depending on its source and nature, to one of five tax accounts:

- the Foreign Income Account (FIA);
- the Maltese Taxed Account (MTA);
- the Final Tax Account (FTA);
- the Immovable Property Account (IPA); and
- the Untaxed Account (UA).

1.3.2 A full imputation system

The taxation of dividends after profits have been taxed at a corporate level amounts to economic double taxation. To avoid this, the Income Tax Act applies a full imputation system to the taxation of most dividends. The imputation system applies when profits are distributed from the IPA, the FIA, and the MTA. The tax paid by the company is available as a credit to the shareholders when distributions are made to them. As a result, shareholders are not subject to any further tax on dividends, since the highest rate of tax for individuals is equal to the corporate tax rate in Malta, as shown below.

<table>
<thead>
<tr>
<th>Taxation at the level of the Maltese company</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income</td>
<td>100</td>
</tr>
<tr>
<td>CIT @ 35%</td>
<td>(35)</td>
</tr>
<tr>
<td>Income allocated to Maltese Taxed Account or Foreign Income Account</td>
<td>65</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Taxation at the level of the shareholder</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net dividend received by shareholder</td>
<td>65</td>
</tr>
<tr>
<td>Tax at source (CIT)</td>
<td>35</td>
</tr>
<tr>
<td>Gross dividend received by shareholder</td>
<td>100</td>
</tr>
<tr>
<td>Tax on dividend received</td>
<td>35</td>
</tr>
<tr>
<td>Full imputation credit (TAS)</td>
<td>(35)</td>
</tr>
<tr>
<td>Tax suffered on dividends</td>
<td>0</td>
</tr>
</tbody>
</table>

In addition to a full imputation system, Malta also operates an attractive refundable tax credit mechanism. Under this mechanism, shareholders of a company registered in Malta are entitled to claim tax refunds upon income distributed from the MTA and FIA.

1.3.3 The six-sevenths tax refund

A person in receipt of a dividend paid to him or her by a company registered in Malta from profits allocated to its FIA or MTA may claim a refund of six-sevenths of the Advance Company Income Tax (ACIT) paid by the distributing company. This is subject to two conditions:

- The company is not entitled to claim double tax relief on income allocated to the FIA; and
- The income does not qualify as passive interest or royalties.

1.3.4 The five-sevenths tax refund

Persons receiving distributions of profits derived from passive interest or royalties are entitled to claim a refund of five-sevenths of the ACIT. This refund also applies to dividends received from a participating holding in a company that does not satisfy the relevant anti-abuse provisions. The five-sevenths refund does not apply when a dividend is paid out of profits allocated to the FIA if the company has claimed relief for double taxation.

1.3.5 Full refund/Outright exemption (Participation Exemption) and two-thirds refund

When profits are distributed from the foreign account of a so-called participating holding (refer to paragraph 2.2 Inter-Corporate dividends on page 23), or from the disposition of such a holding, a claim may be made for...
a refund of all the Maltese tax paid in respect of those profits.

The application of the participation exemption to dividends from a participating holding is linked to an anti-abuse provision, such that the exemption applies provided that the persons claiming the participation exemption satisfy any one of the following conditions:

- they are resident or incorporated in a country or territory forming part of the EU;
- they are subject to any foreign tax of at least 15%; or
- not more than 50% of their income is derived from passive interest or royalties.

Where none of these conditions are satisfied, the participation exemption can still apply if both of the following two conditions are fulfilled:

- the equity holding by the company registered in Malta in the body of persons not resident in Malta is not a portfolio investment, that is, a holding of shares by a company registered in Malta in a company or partnership not resident in Malta and which derives more than 50% of its income from portfolio investments; and
- the body of persons not resident in Malta, or its passive interest and royalties, have been subject to any foreign tax of at least 5%.

The participation exemption regime, first introduced into Malta’s tax laws in 2007, has been extended to permanent establishments situated outside Malta. Thus, subject to certain conditions, any income or gains derived by a company registered in Malta that are attributable to a permanent establishment situated outside Malta or that are attributable to the transfer of such permanent establishment to Malta, are exempt from Malta income tax effective from the year of assessment 2013.

In addition, as a consequence of the change in the definition of “participating holding” (refer to paragraph 2.2 Inter-Corporate dividends on page 23), the participation exemption regime now also applies to the transfer of an interest in a partnership en commandite, the capital of which is not divided into shares and constituted under the Companies Act (other than a “property partnership”).

A non-resident person in receipt of a dividend paid to him or her from profits allocated to the FIA or any profits distributed by an international trading company may claim a refund of two-thirds of the Maltese tax paid by the company in respect of those profits distributed to him or her by way of such dividend.

### 1.3.6 Exempt income

The following exemptions are relevant to companies:

- The participation exemption upon dividends arising from a participating holding or any gains from the disposition of such a holding, as explained above;
- Interest, discount, premium, or royalties accruing to, or derived by, a non-resident;
- Any gains or profits accruing to non-residents upon the disposition of securities;
- The income of any retirement fund or retirement scheme licensed under the Special Funds (Regulation) Act other than income from immovable property situated in Malta;
- The profits of a non-resident ship owner, provided that the country to which such non-resident ship owner belongs extends a similar exemption to ship owners who are not resident in such country but who are resident in Malta;
- Any dividend paid, or payable, out of petroleum profits;
- The income of a collective investment scheme other than income from immovable property situated in Malta, and bank interest from a Maltese bank and interest from Maltese government bonds; and
- The tax exemption on income derived from patents in respect of inventions and copyright has, with effect from the year of assessment 2013, been extended to income derived from trademarks, subject to such terms and conditions yet to be prescribed.

### 1.3.7 Deductions

Maltese law allows an expenditure to be deducted if it is “wholly and exclusively” incurred “in the production of the income”. The following are some of the deductions applicable under the Income Tax Act:

- Interest on money borrowed, where the interest was payable on capital employed in acquiring the income;
- Rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;
- Repairs of premises, plant, or machinery employed in acquiring the income, or for the renewal, repair, or alteration of any implement, utensil, or article so employed;
- Any sum contributed by an employer to a pension saving, provident, or any other society or fund as prescribed;
• Yearly wear and tear deductions in respect of “premises”, which are industrial buildings or structures and “plant and machinery” employed in the production of the income. With effect from 1 January 2012, the term “industrial building or structure” includes a car park, which is a structure of a commercial nature that is available to the general public. The deduction is available in respect of premises that are first used as a car park after 1 January 2012. Note also that parking must constitute the main income generating activity of the person claiming the deduction;
• Bad debts incurred during the year, subject to a number of conditions;
• Trading losses carried forward from one year to the next, and the surrendering of losses from one company in a group to another. These are also subject to several conditions;
• A 100% deduction on expenditures on scientific research incurred for the use and benefit of a trade, business, profession, or vocation.
• A 150% deduction also applies on capital and current expenditure incurred on “scientific research”;
• Expenditures on patents and patent rights proved to have been incurred for the use and benefit of a trade, business, profession, or vocation;
• Promotion and market research expenses, namely:
  • Expenditures on market research;
  • Expenditures for obtaining market information;
  • Expenditures on advertising or other means of soliciting business;
  • Costs incurred in the provision of samples;
  • Expenditures incurred on the participation in fairs and exhibitions.
• Expenditures of a capital nature on intellectual property rights incurred for the use and benefit of a trade, business, profession, or vocation. These are spread equally over three years;
• Certain pre-trading expenses that have been incurred not more than 18 months before commencement of an income-earning activity, namely:
  • Staff training;
  • Salaries and/or wages;
  • Advertising.

1.3.8 Valuation of inventory
There is no specific rule in the Income Tax Act regarding the valuation of inventory. Inventory is valued in accordance with accepted accounting standards. Typically the first in, first out (FIFO) method is accepted.

1.3.9 Depreciation and amortisation
The rates of tax depreciation and amortisation shown in the chart below apply for both corporate and personal income tax and replace accounting depreciation, which is not an allowable deduction. Tax depreciation is calculated on a straight-line basis.
1.5.2 Withholding taxes

Payments to residents on income arising in Malta are taxable by way of withholding as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computers and electronic equipment</td>
<td>25</td>
</tr>
<tr>
<td>Computer software</td>
<td>25</td>
</tr>
<tr>
<td>Motor Vehicles</td>
<td>20</td>
</tr>
<tr>
<td>Furniture, Fixtures, Fittings and Soft Furnishings</td>
<td>10</td>
</tr>
<tr>
<td>Equipment used for construction of buildings and excavation</td>
<td>16.67</td>
</tr>
<tr>
<td>Catering Equipment</td>
<td>16.67</td>
</tr>
<tr>
<td>Aircraft</td>
<td></td>
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<td>Medical Equipment</td>
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<td>Other plant</td>
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1.4 Losses

Trading losses are allowed as a deduction for tax purposes. A loss is considered a trade loss if it would have been treated as taxable income if it had been a profit. Thus, a loss incurred in an activity that could have yielded exempt income is not considered to be a tax loss.

Trade losses incurred overseas are deductible provided that, if such losses had been a profit and had been retained outside Malta, they would have been chargeable to tax.

Trade losses can be carried forward indefinitely and may be set off against any source of income, including capital gains.

1.5 Rates

1.5.1 Income

The rate of corporate tax in Malta currently stands at 35%, with a full imputation system of taxation and a refundable tax credit mechanism running in tandem.

Foreign withholding tax levied on income derived by a resident of Malta and arising in a treaty country is regulated by the respective tax treaty provisions. With regard to investment income, an option exists to receive the income free from withholding tax and to subject it to normal rates of tax instead.
A lower, or nil, rate may be authorised in specific circumstances. Article 73 of the Income Tax Act also states that where a person makes a payment to a non-resident, this payment is subject to a withholding tax. This occurs unless the person receiving the payment is authorised by the Commissioner of Inland Revenue to pay tax at a lower rate, or at a nil rate.

It is important to note that Malta does not levy any withholding tax on outbound dividends.

1.6 Incentives – The Malta Enterprise Act

The Malta Enterprise Act provides for a set of incentives aimed at promoting small and medium-size enterprises (SMEs) and investment by local and foreign companies. These incentives are broadly split into three categories, as follows:

1.6.1 Investment Aid Regulations

These regulations include tax incentives aimed to stimulating investment and job creation. In general, these tax incentives take the form of an investment tax credit that is calculated either as:

- A percentage of the capital expenditure on the qualifying activity; or
- A percentage of the wage costs for wages paid in connection with the jobs created as a result of the qualifying project;

1.6.2 Assistance to Small and Medium-Sized Business

The Malta Enterprise Act prescribes a wide range of assistance for small and medium sized undertakings, namely:

- The development of new businesses;
- Small-sized start-ups;
- Innovation;
- The use of experts;
- Participation in fairs and exhibitions; and
- Preparation and submission of proposals for participation in projects funded through initiatives promoted by the European Union.

1.6.3 Enterprise Support Incentives Regulations

The Enterprise Support Incentives Regulations prescribe the circumstances when the Malta Enterprise Act may provide cash grants to firms that carry on an activity that may contribute to the economic development of Malta.

1.7 Administration

1.7.1 Taxable period

The tax year is the calendar year (1 January to 31 December) and is known as the “year of assessment”. For companies, the basis year is the accounting period ending in the previous calendar year. The year end for tax purposes can be changed, subject to the approval of the Commissioner of Inland Revenue.

1.7.2 Tax returns and assessment

Companies with a January to June financial year end are required to submit their tax return by 31st March of the subsequent year. Companies with a different year end are required to file their tax return within 9 months from their year end.
1.7.3 Payment of tax

For companies having a July to December year end, payment of corporation tax is due nine months after the end of the accounting period. For companies having a January to June year-end, settlement of corporation tax must be paid by 31 March of the following year. Resident companies are obliged to pay their provisional tax liabilities by 30 April, 31 August, and 21 December of every calendar year. Provisional taxation is based on taxes paid for the benchmark year of assessment. Underpayments of tax incur interest charged at a rate of 1% per month.

Companies that possess the majority of their business interests abroad, and which satisfy the relevant conditions, are entitled to pay corporate tax within 18 months of the financial year end in question, however, instead of the nine-month deadline imposed for other companies. Interest charges are payable or receivable on any under or over-payment of taxation (if such refund is not processed by the tax authorities within established time frames).

1.7.4 Rulings

The Inland Revenue will provide rulings in advance in areas where there might otherwise be fear or uncertainty of infringing Maltese anti-avoidance legislation. Such rulings ensure that the fiscal implications of investing in, or through, Malta, or of setting up a base in Malta, are made clear from the outset.

Rulings can be requested on:
- The tax treatment of any transaction involving international business;
- The tax treatment of any transaction concerning a financial instrument;
- Whether a shareholding is in the course or furtherance of the shareholder’s business for the purposes of the participating holding regime; or
- Whether a particular transaction falls within the scope of the anti-avoidance provisions of the Income Tax Act.

Advance revenue rulings are binding for a period of five years and are issued by not later than 30 days from application. They also remain valid for two years from the time that any relevant changes are made to the Income Tax Act.

2. GROUPS OF COMPANIES

2.1 Group treatment

Under Maltese law, two companies are considered to form part of the same group if, and only if:
- They are both resident in Malta and not resident for tax purposes in any other country; and
- One is the 51% subsidiary of the other or both are the 51% subsidiaries of a third company resident in Malta.

Under the local “group loss relief” provisions a company (known as the “surrendering company”) is entitled to surrender any tax losses incurred in a year of assessment to another company (known as the “claimant company”). Before any losses are surrendered, all the following conditions must be satisfied:
- The surrendering company and the claimant company must have been members of the same group throughout the year preceding the year of assessment concerned;
- The companies must have coterminous accounting periods;
- The companies must satisfy the definition of a “group” under the Income Tax Act;
- A surrendering company may surrender allowable losses by way of group relief in excess of the total income of the claimant company in the financial year concerned. In this case, the claimant company may carry forward and set off those losses in accordance with the provisions set out in Section 1.4 (Losses) on page 20;
- A claim for group relief requires the consent of the surrendering company;
- Losses can only be surrendered to the same taxed account of the claimant company (for example, MTA losses can only be surrendered and utilised against the future profits on the MTA of the claimant company);
- Group loss relief may not be given more than once;
- Two or more claimant companies cannot, in respect of any one loss, obtain more relief in total than could be obtained by a single claimant company; and
- A claim for group loss relief must be made not later than 12 months following the end of the company’s accounting period.
It should also be noted that a claim for group loss relief need not be made for the full amount available in a tax period. A recently introduced rule provides that when the allowable loss, had it been a profit, would have been allocated to the IPA or the MTA of the surrendering company, the claimant company may deduct such loss from its income that stands to be allocated to either the IPA or the MTA, and such loss may only be carried forward against the claimant’s total income arising in subsequent years as would stand to be allocated to either of these taxed accounts. Similarly, where the allowable loss, had it been a profit, would have been allocated to the FIA, of the surrendering company, the claimant company may only deduct such loss from its total income as would stand to be allocated to its FIA and such loss may only be carried forward against the claimant company’s total income arising in subsequent years as would stand to be allocated to its FIA.

2.2 Inter-corporate dividends (Participating Holding)

When profits are distributed from the foreign account of a so-called participating holding or from the disposition of such a holding, a claim may be made for a refund of all the Maltese tax paid in respect of those profits. A participating holding is a holding that arises where:

- a company directly holds at least 10% of the equity shares of a company whose capital is wholly or partly divided into shares, which holding confers an entitlement to at least 10% of any two of the following:
  - right to vote;
  - profits available for distribution; and
  - assets available for distribution on a winding up; or
- 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
- 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 disposition, redemption, or cancellation of all of the equity shares of that company not held by that equity shareholder company; or
- a company is an equity shareholder that holds an investment representing a total value, as on the date or dates on which it was acquired, of at least EUR 1,164,000 (or the equivalent sum in a foreign currency) in the company, and that holding in the company is held for an uninterrupted period of not less than 183 days; or
- a company is an equity shareholder in a company, 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.

The application of the participation exemption to dividends from a participating holding is linked to an anti-abuse provision, see Section 1.3.5 (Participation exemption) on page 17.

Recent legislative amendments have extended the application of the participation exemption to domestic holdings, thus allowing an exemption on gains or profits.
derived from the transfer of a participating holding in a company resident in Malta. Dividends from companies resident in Malta (whether participating holdings or otherwise) are not subject to any further taxation in Malta as a result of the full imputation system.

2.3 Company reorganisations
Company reorganisations are governed by the EU Merger Directive. An important provision is that tax losses carried forward by the target company may be utilised by the acquiring company only if the two companies are merged, unless the Inland Revenue Department considers such a merger a scheme and thus invokes the anti-abuse provisions.

3. OTHER TAXES ON INCOME

3.1 Capital gains tax
Capital gains arising in Malta are subject to income tax according to Article 5A or Article 5 of the ITA. This tax can either be:

- The final withholding tax on property transfers (Article 5A). This is charged at 12% of the transfer value of immovable property less a number of deductions. However, the 12% final tax has been phased out by 31/12/15 to be replaced by an 8% (increasing to 10% in case it was acquired before 1/1/04) final tax. If the property had been inherited prior to 25 November 1992, the tax is charged at 7%;
- The capital gains tax, which is a flat 35% rate on any gains derived by the vendor (Article 5). This is charged on certain immovable property, securities, business assets, goodwill, copyright, patents, trademarks, trade names, usufruct, or any rights over any of the above assets, or beneficial interest in a trust where the trust property includes any of the above assets.

As from 1 January 2015, the 35% capital gains tax system has been completely removed and an 8% final withholding tax system on all property transfers shall apply with the following two exceptions:

- In the case of individuals who do not carry on the business of property trading, the applicable final withholding tax rate shall be 5% if the property is transferred less than five years after the date of its acquisition.
- In the case of properties acquired by any person (individuals & companies) before the 1st January 2004 the applicable final withholding tax rate shall be 10% the value of the property transferred.

A number of exemptions also exist.

4. PAYROLL TAXES

4.1 Payroll tax
There is no payroll tax currently in existence in Malta.

4.2 Social security contributions
All employers are required to contribute to a compulsory national social security system. Contributions depend on whether the individual is employed, self-employed, or self-occupied (see Section 3 (Social security contributions) page 35.

5. TAXES ON CAPITAL

5.1 Net worth tax
There is no net worth tax currently in force in Malta.

5.2 Real estate tax
Maltese law does not impose any real estate or other such property taxes.

6. INTERNATIONAL ASPECTS

6.1 Resident companies
For the concept of residence, refer to Section 1.2.1 (Residence) page 16.

6.1.1 Foreign income and capital gains
The territorial basis of taxation applies. Companies incorporated in Malta are deemed to be resident and domiciled in Malta and are, therefore, taxable in Malta on their worldwide income.

6.1.2 Foreign capital
In general, the lex situ principle applies to capital gains derived by companies resident in Malta, in the same manner as the principle applicable to individuals. Resident and domiciled companies and individuals are taxable on the foreign capital gains even if not remitted to Malta but subject to the possibility of claiming double tax relief.
6.1.3 Double taxation relief

Malta has an extensive network of tax treaties under which double taxation of non-Maltese income is generally avoided. The list of Malta’s tax treaty partners is shown in Section 6.3.5 (Withholding tax rates chart) page 25. Relief from double taxation is then granted under the domestic provisions of the Income Tax Act using double taxation relief or Commonwealth relief. Maltese law also provides for two further systems of relief from double taxation in Malta:

- Unilateral relief, which grants double taxation relief on a unilateral basis where overseas tax is suffered on income received from a country with which Malta is not a treaty partner and Commonwealth relief is unavailable; and

- A Flat-Rate Foreign Tax Credit, which is a notional tax credit of 25% receivable by a Maltese company on income or gains that stand to be allocated to its FIA, subject to fulfilment of the relevant conditions within the law.

The taxpayer is at liberty to choose which double taxation relief should apply. The interaction of the different types of relief is shown in the following chart:

Claim for relief from Double Taxation in Respect of Overseas Income

6.2 Non-resident companies

For the concept of residence, see Section 1.2.1 (Residence) page 16.

It is possible for a non-resident company to operate in Malta by opening a branch. Recently enacted legislation entitles such branches to the same tax benefits that pertain to resident companies. In other words, a branch of a foreign company could avail itself of the full imputation system, as well as the refundable tax credit mechanism. Malta does not levy a branch remittance tax or a similar tax on profits that are deemed to be distributed to the head office.

6.2.1 Taxes on income and capital gains

Non-resident companies are subject to tax on income that is sourced in Malta.

6.2.2 Taxes on capital

The lex situs principal applies for capital gains taxation.

6.2.3 Administration

Every non-resident company with a registered branch in Malta must file a set of audited financial statements on an annual basis relating to the activities conducted by the Maltese branch. A local branch representative must be appointed and the representative must prepare a report that outlines the activities of the local business and provides assurance that the directors’ and branch representatives’ responsibilities are being met.

6.3 Withholding taxes

6.3.1 Dividends

No withholding tax is levied on dividends paid to non-residents.

6.3.2 Interest

No withholding tax is levied on interest paid to non-residents.

6.3.3 Royalties

No withholding tax is levied on royalties paid to non-residents.

6.3.4 Other

There are no outbound withholding taxes in existence in Malta.

6.3.5 Withholding tax rates chart

The following table illustrates Malta’s extensive double tax treaty network, including the inbound withholding taxes imposed on dividends, interest and royalty income.
<table>
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<tr>
<th>Country</th>
<th>Dividends (%)</th>
<th>Interest (%)</th>
<th>Royalties (%)</th>
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</thead>
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</tbody>
</table>

(*) The withholding tax rates do not emerge from the treaty but from domestic law.
(**) Not yet in force.

7. ANTI-AVOIDANCE

71 General

The income tax legislation contains a few general anti-avoidance provisions.

One provision provides that where any artificial, fictitious, or abandoned scheme is created that reduces the amount of tax payable by any person, this shall be disregarded by the tax authorities and the person concerned shall be assessable accordingly.

Another provision provides that where “a series of transactions” is effected with the sole or main purpose of reducing the amount of tax payable by a person under the “investment income provisions”, then such person is assessable as if the said provisions did not apply. A similar anti-avoidance provision applies to the application of the Flat Rate Foreign Tax Credit.

Another anti-avoidance provision relates to group loss relief. If a company forms part of a group, and arrangements are in existence with the sole or main purpose of reducing any company’s tax liability, then that company shall be treated as not being a member of that group of companies for any year in which the said arrangements are in place.

Maltese law does not contain any system that requires the advance disclosure of avoidance schemes.
7.2 Transfer pricing
There are no specific transfer pricing regulations in Maltese law. However, the arm’s length principle as defined in the OECD Model Convention is widely applied for related party transactions.

7.3 Thin capitalisation
No thin capitalisation rules exist in Malta.

7.4 Controlled foreign company
Malta does not impose any Controlled Foreign Company rules.

8. VALUE ADDED TAX

8.1 General
Value added tax was reintroduced in Malta on 1 January 1999 and was subsequently amended to bring it in line with EU VAT rules, mostly incorporating the provisions on intra-community trade contained in the Council Directive 2006/112/EC.

8.2 Taxable persons
A taxable person is any person (individual or corporate) that carries out an economic activity consisting of one or more of the following:

• Any trade or business;
• Any profession or vocation, or the provision of any personal services;
• The exploitation of tangible or intangible property for the purpose of obtaining income on a continuing basis;
• The provision of facilities or benefits available to members by a club, association, or organisation for consideration; and
• The admission of persons to any premises for consideration.

A person who does not carry on any of the above activities but who, from time to time, makes an intra-community supply of new means of transport is, for the purpose of any such supply, treated as a taxable person.

i) A taxable person:
• deemed to be established in Malta, makes a supply for consideration in Malta, other than an exempt without credit supply;
• deemed to be established in Malta, who supplies services within the territory of another Member State for which the tax is payable solely by the recipient (the customer in another EU Member State);
• not established in Malta and who is liable for the payment of VAT in Malta. Simplification rules under Council Directive 2006/112/EC may apply to override the obligation for registration;
• registered in another EU Member State on making supplies of goods to non-taxable persons on account of the distance sales threshold, which is currently EUR 35,000 in a calendar year, being exceeded;
• on making an intra-community acquisition exceeding the current threshold of EUR 10,000 in one calendar year;
• on receiving a service deemed to be a taxable supply in Malta from a supplier established in a third territory where, under business-to-business (B2B) rules, the taxable supply is deemed to take place in Malta; and
• on receiving a service deemed to be a taxable supply in Malta from a supplier established in another EU Member State where, under B2B rules, the taxable supply is deemed to take place in Malta;

ii) A non-taxable legal person registered in Malta on making an intra-community acquisition exceeding the current threshold of EUR 10,000 in one calendar year.


8.3 Registration
Registration is obligatory within 30 days of the date of supply as follows:

8.4 Taxable transactions
VAT is chargeable on all goods and services where the place of supply is deemed to be Malta unless specific exemptions are available under the VAT Act.

8.5 Taxable amount
The taxable value is the total value of the consideration paid and/or payable to the supplier by the purchaser, the customer, or any other person for the supply, including any subsidy directly linked to the provision of that supply but excluding the VAT chargeable on that supply.
Taxable value includes:

- taxes, duties, levies, fees and other charges (excluding the value added tax chargeable under this Act) payable by reason of the supply;
- incidental expenses, such as commissions, packing, transport, and insurance costs charged by the supplier to the purchaser or customer even if they are covered by a separate agreement or a separate document;

Taxable value does not include:

- Price reductions by way of discount for early payment;
- Rebates and other price reductions allowed directly by the supplier to the customer and accounted for at the time when the tax becomes chargeable;
- Penalties and interest charged for late payment after the time of supply;
- Disbursements paid in the name and for the account of the person to whom the supply is made and resulting from documents held by the supplier to have been so paid, which are entered in the records of the supplier in a suspense account;
- Any amount charged to the customer by way of deposit on returnable packing of goods where the deposit is lower than the cost of the packing.

8.6 Exemptions

The following are the exemptions as stated in the VAT Act:

- Food for human consumption, excluding food supplied in the course of catering;
- Pharmaceutical goods;
- Exports and like transactions;
- Intra-community supplies;
- Lotteries and gaming services;
- International goods traffic;
- The supply of vessels and aircraft, and related ancillary services;
- International transport of passengers, and ancillary services;
- Letting of property by individuals except where such letting is required to be licensed by virtue of the Malta Travel and Tourism Services Act;
- Letting of property by a limited liability company to non-taxable individuals, except where such letting is required to be licensed by virtue of the Malta Travel and Tourism Services Act;
- The transfer of immovable property;
- Insurance services;
- Credit, banking, and other related services;
- Education and cultural services;
- Health and welfare;
- Investment gold.

The above list is not exhaustive and items on it are subject to the relevant criteria as per the VAT Act.

8.7 Rates

The standard VAT rate is 18%.

A reduced rate of 7% applies to accommodation services in any premises required to be licensed by virtue of the Malta Travel and Tourism Services Act.

A reduced rate of 5% is also applicable for:

- The supply of electricity;
- The supply of confectionery and similar items*;
- The supply of medical accessories*;
- The supply of printed matter*;
- Admission to museums, art exhibitions, concerts, and theatres;
- The importation of works of art, collector’s items, and antiques;
- Items for the exclusive use of the disabled*;
- Domestic care services, such as home help and care of the young, elderly, sick, or disabled.

*As per respective CN Code

8.8 Changes to the VAT rules – Telecommunications, Broadcasting and Electronic Services

As of 1 January 2015 the place of B2C supplies of electronic services by suppliers will shift to the country where the customer is established or usually resides. Businesses/Suppliers, having customers in different EU Member States will have to determine whether VAT is chargeable in the Member State of their customer, and, if so, charge VAT at the rate stipulated by that country where the supply is made.

This means that established operators will have to either register for VAT in the Member State of their customer, or can opt to register in only one Member State and to report the VAT due in other Member States in one single electronic declaration (under the so-called ’mini one-stop-shop’ scheme).
Duty on transfer of securities – Extension of exemption

The Duty on Documents and Transfers Act contains an exemption from duty on the transfer of marketable securities by, or in, a company that proves to the satisfaction of the Commissioner that it carries on, or intends to carry on, business or has, or intends to have, business interests of which more than 90% are outside Malta.

Subject to these same conditions, this exemption has now been extended to also include acquisitions of marketable securities made by a trust or fiduciary arrangement consisting of a licensed retirement

9. MISCELLANEOUS INDIRECT TAXES

9.1 Capital duty
Malta does not impose any capital duty on the initial contribution of capital to a limited liability company or on a subsequent increase in share capital. Furthermore, Malta does not impose any tax on the conversion of, or on the re-domiciliation of, a limited liability company to or from Malta.

9.2 Transfer tax
As explained above, a 12% final withholding tax applies to inter vivos transfers of immovable property situated in Malta. The final tax is set at 7%, provided the property was inherited prior to 25 November 1992. A deduction for the acquisition value is allowed where the property was acquired by inheritance on or after 25 November 1992.

As from 1 January 2015, the 35% capital gains tax system has been completely removed and an 8% final withholding tax system on all property transfers shall apply with the following two exceptions:

- In the case of individuals who do not carry on the business of property trading, the applicable final withholding tax rate shall be 5% if the property is transferred less than five years after the date of its acquisition.
- In the case of properties acquired by any person (individuals & companies) before the 1st January 2004 the applicable final withholding tax rate shall be 10% the value of the property transferred.

Furthermore, a number of exclusions and exemptions to this final tax regime may be applied.

9.2.1 Immovable property
The transfer tax described above applies to any transfers of immovable property situated in Malta.

9.2.2 Shares, bonds, and other securities
Transactions of a capital nature may incur a capital gains tax of 35%. Article 5 of the ITA includes “securities” within the definition of a capital asset. These are defined as “shares and stocks and such like instruments that participate in any way in the profits of the company and whose return is not limited to a fixed rate of return, units in a collective investment scheme...”. This means that securities with a fixed rate of return, including bonds and preference shares, are not taxable at the 35% rate.

The transfer of bonds and other fixed income securities is not covered by the above definition of “securities”.

Therefore, it could be argued that these assets are not taxable at all, provided they are not of a trading nature.

No capital gains taxation is charged when deals are made to sell shares in companies listed on the Malta Stock Exchange. Capital gains derived by a non-resident on the transfer of shares in a Maltese company are likewise exempt from tax.

9.3 Stamp duty
Stamp duty is levied on various transactions in Malta, the most of which are being listed in the following table:

<table>
<thead>
<tr>
<th>Inter vivos transfers</th>
<th>Transmissions causa mortis (succession)</th>
<th>Insurance policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immovable property</td>
<td>Immovable property</td>
<td>Life</td>
</tr>
<tr>
<td>Shares in property companies</td>
<td>Shares in property companies</td>
<td>Other (except aviation, marine, export credit, suretyship &amp; medical cover)</td>
</tr>
<tr>
<td>Other securities</td>
<td>Shares in other Maltese companies</td>
<td>(min. €13 or 11% if premium &lt; €13)</td>
</tr>
<tr>
<td>Auction sales</td>
<td>Emphyteutical grants (duty payable as a percentage of ground rent)</td>
<td></td>
</tr>
<tr>
<td>Not more than 25 years</td>
<td>12%</td>
<td>0.1% of sum assured</td>
</tr>
<tr>
<td>25 to 50 years</td>
<td>33%</td>
<td>1% of sum assured</td>
</tr>
<tr>
<td>50 to 75 years</td>
<td>65%</td>
<td>1% of premium</td>
</tr>
<tr>
<td>75 years and over (up to 100 years)</td>
<td>75%</td>
<td>(min. €13 or 11% if premium &lt; €13)</td>
</tr>
</tbody>
</table>

Duty on transfer of securities – Extension of exemption

The Duty on Documents and Transfers Act contains an exemption from duty on the transfer of marketable securities by, or in, a company that proves to the satisfaction of the Commissioner that it carries on, or intends to carry on, business or has, or intends to have, business interests of which more than 90% are outside Malta.

Subject to these same conditions, this exemption has now been extended to also include acquisitions of marketable securities made by a trust or fiduciary arrangement consisting of a licensed retirement...
fund or retirement scheme the income of which is exempt from tax in Malta and whose beneficiaries consist solely of individuals who are not resident in Malta.

*Duty on purchase of own residence*

Where a person acquires property for the purpose of establishing therein or constructing thereon, his or her sole, ordinary residence, a reduced rate of duty (3.5% instead of 5%) applies on the first EUR 150,000 of the value of such property. This duty has been removed on the first EUR 150,000 for first time buyers, during 2016, in accordance with the Budget speech.

**INDIVIDUAL TAXATION**

1. **INCOME TAX**

Individuals having a connection with Malta are subject to income tax. The liability of an individual to Maltese tax depends on the dual concepts of “residence” and “domicile”. A “resident” for income tax purposes is defined as “...an individual who resides in Malta except for such temporary absences as to the Commissioner may seem reasonable and not inconsistent with the claim of such individual to be resident in Malta.” An individual is typically deemed to be a resident of Malta if his stay in the country exceeds a period of 183 days in a tax year. “Domicile”, on the other hand, is more of a legal concept linked to an individual’s permanent home.

1.1 Taxable persons

The following jurisdictional rules apply for the taxation of individuals:

- Individuals who are both resident and domiciled in Malta are taxable in Malta on their worldwide income (irrespective of where the income is received);
- Individuals who are either resident but not domiciled in Malta or domiciled but not resident in Malta are taxable in Malta on all their income arising in Malta and all foreign source income received in Malta;
- “Temporary residents” are not chargeable to income tax at all in Malta on foreign source income. They are only liable to tax upon income arising in Malta. By elimination, a temporary resident is defined as an individual who:
  - is in Malta for some temporary purpose only;
  - has no intention to establish his residence therein; and
  - has not resided in Malta at one or more times for a period equal to six months in the year concerned.

1.2 Taxable income

1.2.1 General

Individuals who are resident in Malta are taxed on their worldwide income. Income is taxed if it falls within one of the categories set out below:

- Gains or profits from any trade, business, profession, or vocation;
- Gains or profits from any employment or office, including the value of any benefit provided by reason of any employment or office, also including a director’s fee or director’s salary;
- Passive income, such as dividends, premiums, interest, or discounts;
- Rents, royalties, premiums and, any other profits arising from property;
- Capital gains on securities and immovable property.

Taxable income is computed by aggregating the income from all categories for the tax year and reducing this aggregate amount by personal deductions (Section 1.7.1 (Deductions) page 33) and by any losses carried forward (Section 1.8 (Losses) page 34). The remaining amount is then subject to income tax.

1.2.2 Exempt income

The following types of income are exempt from taxation:

- Disability pension and pension for the visually impaired;
- Allowances and benefits payable under the Social Security Act;
- Any interest, discount, premium, or royalties accruing to a person not resident in Malta, provided that such person is not engaged in a trade or business in Malta through a permanent establishment;
- Any gains or profits accruing to, or derived by, any person not resident in Malta on a transfer of
units in a Collective Investment Scheme or any units and instruments related to a linked long-term business of insurance;
• 30% of capital sums received by way of commutation of pension, retiring, or death gratuity, or received as consolidated compensation for death or injuries;
• The profits of non-resident ship owners;
• Any dividend paid or payable out of gains or profits deriving from the production of petroleum in Malta;
• Any financial assistance received by an individual from his estranged spouse in respect of the maintenance of a child;
• Royalties and similar income derived from patents in respect of inventions, whether in the course of a trade, business, profession, vocation or otherwise.

The above list is not exhaustive. For the full list of exempt income one should refer to Article 12 of the Income Tax Act.

1.3 Employment income

1.3.1 Salary
Income from an office or employment, such as salaries, wages, directors’ remuneration, and fringe benefits, are subject to income tax withheld at source by the employer (Section 1.9.2 (Withholding tax) on page 35).

Deductions are granted for expenses wholly and exclusively incurred in the production of income and include contributions to trade unions. For deductible contributions, see Section 1.7.1 (Deductions) on page 33. Commuting costs and costs of moving, in general, are not deductible.

Exempt income includes lump sums received by way of gratuities, 30% of commutations of pensions, death gratuities or as consolidated compensation for death or bodily injury. For the exemption of remuneration for work performed, see Section 6.1.1 (Foreign income and capital gains) on page 38.

1.3.2 Benefits in kind
A fringe benefit is defined as “any benefit provided or deemed to be provided by reason of an employment or office”. This definition immediately indicates that the Commissioner
of Inland Revenue may deem a benefit to have been provided and may bring it to charge in the hands of the recipient.

Fringe benefits are chargeable to Income Tax under the terms of section 4(1)(b) of the Income Tax Act. Furthermore, such benefits are taxable whether provided directly by the employer or indirectly by third parties.

The obligation to declare fringe benefits rests with both the employer and employee. Failure to declare any benefits received is subject to a penalty of additional tax at 3% per month.

The Inland Revenue has published guidelines for the valuation of different fringe benefits. Per the guidelines, benefits fall into the following three categories:

• Category 1 – Car Benefits;
• Category 2 – Use of Assets including Accommodation; and
• Category 3 – Other Benefits.

These valuations attribute a salary value to the various benefits, making them taxable through the FSS system.

Employers must keep a record of fringe benefits and their valuation. Furthermore, records are to be kept of all owned, hired, or leased cars, irrespective of whether they are used to provide fringe benefits to their employees.

The Commissioner of Inland Revenue may request submission of these records.

A more detailed insight may be obtained by reference to the publication issued by BDO Malta entitled “Taxation of Fringe Benefits in Malta”.

1.3.3 Pension income

Pension income is taxable income in Malta. However, several pensions are tax-exempt. These include:

• Disability pension and pension for the visually impaired; and
• Social assistance.

1.3.4 Directors’ remuneration

Directors’ remuneration is taxable as income from employment. No special rules apply.

1.4 Business and professional income

Business and professional income is subject to income tax by applying the progressive rates applicable to individuals. The general rule for deduction of expenses is that they must have been incurred wholly and exclusively for the purpose of the business or profession. The deductions permissible are listed under the Corporate Taxation Section 1.3.7 (Deductions) on page 18. Any expenditure that is not incurred wholly and exclusively for business purposes is disallowed.

Certain professionals may also opt to be taxed at a rate of 15%, provided they qualify under the Highly Qualified Persons Rules. These are explained in greater detail in Section 6.2 (Expatriates) on page 39.

1.5 Investment income

Dividends paid by Malta-resident companies to resident individuals carry an imputation tax credit at the tax rate paid by the company on the profits out of which the dividend is paid. These are also covered by the refundable tax credit mechanism.

1.6 Capital gains

As explained in Section 9.2 (Transfer tax) on page 30, transfers of immovable property situated in Malta are typically subject to an 8% final withholding tax.

Foreign individuals may opt out of the final tax regime by choosing to be taxed at 35% on their capital gains, subject to a minimum provisional tax of 8% of transfer value. This enables them to obtain double taxation relief or any other form of tax relief in a foreign jurisdiction.

Furthermore, a number of exclusions and exemptions to this final tax regime may be applied.

Transactions of a capital nature may incur a capital gains tax of 35%. For instance, the sale of ordinary shares would qualify to be taxed at 35%, but the redemption of securities with a fixed rate of return is not taxable under the capital gains rules. The transfer of bonds and other fixed income securities is typically taxable only if the transaction is of a trading nature.

No capital gains taxation is charged on the sale of shares in companies listed on the Malta Stock Exchange. Capital gains derived by a non-resident on the transfer of shares in a Maltese company are likewise exempt from tax.

1.7 Personal deductions, allowances, and credits

1.7.1 Deductions

An individual may benefit from the following deductions as specifically prescribed in the law:

• School fees paid in respect of children attending
prescribed private schools qualify for a deduction against the parent’s income. The deduction is taken at the lesser of: (a) the amount actually paid, or (b) EUR 2,300 for each child attending secondary school, or EUR 1,600 for each child attending primary school, and EUR 1,000 for each child attending kindergarten;

- Deduction for school fee is increased up to EUR 9,320 in the case of a child with special needs for the services of a facilitator;
- A deduction of up to EUR 2,000 in the case of fees paid in respect of childcare services to a licensed or registered childcare centre;
- A deduction of up to EUR 2,500 in respect of fees paid for residence in a private home for the elderly;
- A deduction of up to EUR 100 in respect of fees paid for children who have not attained the age of 16 years, if the child is participating in sports activities organised by a person registered under the Sport Persons Regulations;
- Tertiary Education deductions;
- Alimony payments paid to an estranged spouse (not in respect of children) as determined by the courts of Malta. The amount of this deduction is the lesser of: (a) the alimony payment, or (b) the individual’s chargeable income. The deductible alimony payment would be taxable in the hands of the recipient.

All of the above are subject to certain conditions.

1.7.2 Allowances
No allowances are granted in the Income Tax Act.

1.7.3 Credits
No credits are currently in existence for individuals.

1.8 Losses
A loss is an allowable expense provided it is incurred in the carrying out of a “trade, business, profession, or vocation.” Trade losses can be carried forward indefinitely and may be set off against any other source of income, including capital gains, as described in Section 1.5 (Rates) on page 20.

1.9 Rates

1.9.1 Income and capital gains
Individuals are subject to income tax assessed at progressive rates, as shown below:

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€</td>
<td>%</td>
</tr>
<tr>
<td>0 – 12,700</td>
<td>0</td>
</tr>
<tr>
<td>12,701 – 21,200</td>
<td>15</td>
</tr>
<tr>
<td>21,201 – 60,000</td>
<td>25</td>
</tr>
<tr>
<td>Over 60,000</td>
<td>35</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€</td>
<td>%</td>
</tr>
<tr>
<td>0 – 9,100</td>
<td>0</td>
</tr>
<tr>
<td>9,101 – 14,500</td>
<td>15</td>
</tr>
<tr>
<td>14,501 – 60,000</td>
<td>25</td>
</tr>
<tr>
<td>Over 60,000</td>
<td>35</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€</td>
<td>%</td>
</tr>
<tr>
<td>0 – 10,500</td>
<td>0</td>
</tr>
<tr>
<td>10,501 – 15,800</td>
<td>15</td>
</tr>
<tr>
<td>15,801 – 60,000</td>
<td>25</td>
</tr>
<tr>
<td>Over 60,000</td>
<td>35</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€</td>
<td>%</td>
</tr>
<tr>
<td>0 – 700</td>
<td>0</td>
</tr>
<tr>
<td>701 – 3,100</td>
<td>20</td>
</tr>
<tr>
<td>3,101 – 7,800</td>
<td>30</td>
</tr>
<tr>
<td>Over 7,800</td>
<td>35</td>
</tr>
</tbody>
</table>
1.9.2 Withholding tax
Employers must deduct income tax on wages and salaries at the rates set out in the chart above, including any fringe benefits, in accordance with the Final Settlement System.

1.10 Administration

1.10.1 Taxable period
The taxable period in Malta is the calendar year (1 January to 31 December of every year).

1.10.2 Tax returns and assessment
The deadline for the submission of yearly income tax returns is 30th of June of every year. Tax returns are filed on a self-assessment basis and must show the person’s chargeable income, the tax chargeable thereon, and the tax payable or repayable by that person for the year of assessment in question. For individuals the income in any year of assessment is the income earned in the previous calendar year, which is referred to as the basis year. The Commissioner of Inland Revenue also reserves the right to make enquiries regarding the tax balance, as well as to issue a tax assessment of his own.

1.10.3 Payment of tax
The deadlines for payment of income tax vary depending on the type of taxpayer in question.

The tax payment date for individuals other than self-employed individuals is the same as the tax return date, in other words 30 June, unless exempt from filing a tax return.

A self-employed person must make three equal advance payments of provisional tax on 30 April, 31 August and 31 December 31. The advance payment is based on the taxable income for the previous year.

1.10.4 Rulings
As outlined in Section 1.7.4 (Rulings) on page 22, advance revenue tax rulings are available to taxpayers on a case-by-case basis, but generally are not applicable for individuals.

2. OTHER TAXES ON INCOME
There are no other personal income taxes in existence in Malta.

3. SOCIAL SECURITY CONTRIBUTIONS
The following table illustrates the social security system in Malta, which distinguishes between various categories of individuals obliged to pay social security contributions:

**Employed, self-employed, self-occupied (rates for 2016):**

**Employed**
Contributions for employed person are generally equivalent to one-tenth of an employee’s gross salary up to a maximum of EUR 42.57 per week. However, the actual contribution depends on the type of employment (see schedule below).
*Students who are following a full-time course of studies or instruction under the Student-Worker Scheme, or other similar schemes (including the Extended Skills Training Schemes, but excluding the Worker-Student Schemes) involving distinct work and study periods for which they are receiving remuneration.

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Persons under 18 years of age earning not more than the amount indicated below.</td>
</tr>
<tr>
<td>B</td>
<td>Persons aged 18 and over, earning not more than the amount indicated below.</td>
</tr>
<tr>
<td>C</td>
<td>All persons whose basic weekly wage is between the amounts indicated below.</td>
</tr>
<tr>
<td>D</td>
<td>All persons whose basic weekly wage is equal to or exceeds the amount indicated below.</td>
</tr>
<tr>
<td>E</td>
<td>Students* under 18 years of age.</td>
</tr>
<tr>
<td>F</td>
<td>Students* 18 years old and over.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category</th>
<th>Basic Weekly Wage €</th>
<th>Weekly Rate Payable €</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>From</td>
<td>To</td>
</tr>
<tr>
<td>A</td>
<td>0.10</td>
<td>168.01</td>
</tr>
<tr>
<td>B</td>
<td>0.10</td>
<td>168.01</td>
</tr>
<tr>
<td>C</td>
<td>168.02</td>
<td>344.86</td>
</tr>
<tr>
<td>D</td>
<td>344.87</td>
<td>n/a</td>
</tr>
</tbody>
</table>

*Or if the employee chooses, 10% of the basic weekly wage. This rate of contribution entitles the contributor to pro-rata contributory benefits.

<table>
<thead>
<tr>
<th>Category</th>
<th>Basic Weekly Wage €</th>
<th>Weekly Rate Payable €</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>From</td>
<td>To</td>
</tr>
<tr>
<td>C</td>
<td>168.02</td>
<td>425.73</td>
</tr>
<tr>
<td>D</td>
<td>425.74</td>
<td>n/a</td>
</tr>
<tr>
<td>E</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>F</td>
<td>n/a</td>
<td>n/a</td>
</tr>
</tbody>
</table>

1. Basic Weekly Wage or the weekly equivalent of the basic monthly salary.
2. For percentage rates, the weekly rate payable is calculated to the nearest cent.
**Self-Employed and self-occupied**

So-called "Class Two Contributions" are to be paid by all individuals who derive income of more than EUR 910 from an economic activity and who are not employed.

The Social Security Act defines two categories of persons that are required to pay Class 2 Contributions:

- Self Occupied Persons - persons who earn income from a Trade, Business, Profession, Vocation, or any other economic activity that exceeds EUR 910 per annum.
- Self Employed Persons - persons who receive income from rents, investments, capital gains, or any other income.

Rates for Class Two Social Security Contributions are based on the annual net profit or income for the year preceding the contribution payment year.

The increase in the highest contribution rate payable is related to a guaranteed maximum pensionable income as a result of the pension reform that became law by virtue of Act XIX of 2006 and Legal Notice 336 of 2006.

The contributions are payable by the end of the calendar month following the month to which the contributions relate. The employee’s contribution is deducted from wages by the employer who then adds an equivalent amount as his contribution and pays the whole sum on a monthly basis, along with income tax deductions.

### 4. TAXES ON CAPITAL

#### 4.1 Net worth tax

No net worth tax applies in Malta.

#### 4.2 Real estate tax

No real estate taxes are imposed.

### 5. INHERITANCE AND GIFT TAXES

There are no inheritance or gift taxes in existence in Malta.

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<td>n/a</td>
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</tbody>
</table>

NOTE 1: If the insured person elects to pay a contribution that is less than €28.73, such contribution may, if the person qualifies for a contributory benefit or a contributory pension, result in the payment of a reduced contributory benefit or contributory pension.

2 This reduced rate is applicable for full-time farmers as identified by the Department of Agriculture.
6. INTERNATIONAL ASPECTS

6.1 Resident individuals
For an explanation of the concept of residence, Section 1.2.1 (Residence) page 16.

6.1.1 Foreign income and capital gains
The jurisdictional and territorial boundaries of taxation are discussed in detail in Section 6.1 above. Resident individuals are taxed in Malta on their worldwide income. Foreign-sourced income is only taxable in Malta provided it is remitted to Malta. In the case of individuals who are either resident or domiciled in Malta (but not both), these are only taxable on foreign-sourced income, provided it is remitted to Malta. Only capital gains arising in Malta are taxable in Malta.

6.1.2 Foreign capital
No net wealth tax is currently in existence in Malta.

6.1.3 Double taxation relief
Malta grants relief from double taxation under the credit method on a source-by-source and country-by-country bases. Individuals may apply for relief for double taxation using the following methods:

a) Double taxation relief;
b) Unilateral relief; and

c) Commonwealth relief.

6.2 Expatriates

6.2.1 The Malta Residence and Visa Programme
During a press conference held on Friday 28th August, 2015, the Malta Residence and Visa Programme was launched by the Parliamentary Secretary for Competitiveness and Economic Growth. Through Legal Notice 288 of 2015, the Malta Residence and Visa Programme is available to non-EU nationals together with their registered dependants, who are entitled to be issued with a residence permit allowing the beneficiaries to reside, settle or stay indefinitely in Malta.

6.2.2 The Global Residence Programme
The Global Residence Programme covers non-EU, non-EEA and non-Swiss residents. The Programme will be targeting untapped markets such as South Africa and China for potential investment.

The Programme replaces the existing High Net Worth Individuals rules, providing more favourable measures for expatriates willing to settle in Malta, including lower tax thresholds and minimum property values. The minimum tax to be payable is €15,000 per annum and will include all dependents residing with the beneficiary. Other income remitted to Malta is to be taxed at a flat rate of 15%. Any income arising in Malta will be taxed at a flat 35%.

6.2.3 The Residence Programme Rules, 2014
The Residence Programme Rules were introduced to replace the High Net Worth Individuals (EU/EEA/Swiss Nationals) rules. These rules are aimed to attract individuals who are nationals of the EU, EEA or Switzerland and who do not benefit from any other ‘Special Tax Status’ in Malta. Individuals benefitting from this Programme are not precluded from working in Malta.

Persons qualifying under this scheme are subject to tax at a reduced rate of 15% on any income arising outside of Malta by the beneficiary, their spouses and children, with the possibility of claiming double taxation relief. The minimum amount of tax payable in terms of these rules in respect of income arising outside Malta is €15,000 for any year of assessment.

6.2.4 The Malta Retirement Programme Rules
The MRP Rules are applicable to EU/EEA/Swiss nationals who are not in employment and who are in receipt of a pension, as supported by documentary evidence, all of which is received in Malta and constitutes at least 75% of their chargeable income.

Beneficiaries of this special tax status will need to pay a minimum tax of €7,500 annually and a further €500 in respect of every dependent and household staff.

Any other income arising in Malta or any other foreign income which is not subject to tax in terms of these rules will be subject to tax at a flat rate of 35%
6.2.5 The Highly Qualified Persons Rules

The Highly Qualified Persons Rules (2011) were introduced in a bid to stimulate foreign investment in Malta. The Rules state that expatriates in receipt of income arising from qualifying contracts of employment in Malta may opt to pay tax at a reduced flat rate of 15% on such income. This flat rate applies to income earned after 1 January 2010 and to employees of companies licensed or recognised by the Malta Financial Services Authority, Transport Malta or the Lotteries and Gaming Authority (that is, the competent authority). The individual concerned must satisfy a number of conditions in order to benefit from this scheme:

- The employment activity must constitute an eligible office;
- The income must be derived by means of a qualifying contract of employment; and
- The qualifying contract of employment of the eligible office is in respect of the employment of a qualifying beneficiary.

Individuals who meet the requirements set out in the Rules and who wish to avail themselves of the 15% tax rate need to apply to the relevant competent authority and provide the necessary documentation.

The 15% tax rate is final and cannot be reduced by means of double taxation relief, credit or set-offs of any kind.

A more detailed analysis may be found in the BDO Malta publication entitled “Highly Qualified Persons Rule 2011”.

6.2.6 The Individual Investor Programme (IIP)

The Individual Investor Programme of the Republic of Malta (IIP), by virtue of Legal Notice 47 of 2014, allows for the granting of citizenship through a certificate of naturalisation (i.e. citizenship) by investment to reputable individuals and their dependents provided they make a significant contribution to the social and economic development of the country, following a rigid and thorough due diligence process that includes detailed background checks.

The key objectives for obtaining Maltese citizenship and the benefits gained will vary amongst individuals. However, generally speaking, such objectives and benefits may include:

- Access to all investment opportunities in Malta and throughout the European Union
- Access to the Schengen Area
- Right of establishment in all EU States and Switzerland
- Visa-free travel to more than 160 countries in the world, including the USA
- Possible tax planning benefits
- Dependence on more than one passport (Malta has no restrictions on dual citizenship)
- Personal security
- A stable political system
- Good quality of life
- Better education for one’s children

6.3 Non-residents

For an explanation of the concept of residence, see Section 1.2.1 (Residence) page 16. Non-residents are typically only taxed on income sourced in Malta.

6.3.1 Taxes on income and capital gains

Typically, no withholding taxes are imposed on dividends, interest, and royalties paid to non-residents, provided these do not operate through a permanent establishment and the royalties and debt claim in respect of which they are paid are not effectively connected with such permanent establishment. In addition, no Maltese tax is imposed on gains realised from transfers of corporate securities by non-residents, as long as the relevant conditions are complied with, particularly that the main assets of the company whose securities are being transferred do not consist of Maltese immovable property.

6.3.2 Taxes on capital

No wealth tax exists in Malta. Non-residents are also subject to the 8% final withholding tax system on all Malta property transfers (with some exceptions).

6.3.3 Inheritance and gift taxes

No inheritance or gift taxes are imposed in Malta.

6.3.4 Administration

No special rules apply to non-residents. For more information see Section 1.10 page 35.
BDO MALTA

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- Directorship & Company Secretarial
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- Yachting and Marine Services
- Formation of Trusts and Foundations
- Securitisation Vehicle and Funds Setup

If you would like more information, please contact us at the following address:

Tower Gate Place
Tal-Qroqq Street
Msida
Malta, MSD 1703
Telephone: +356 2131 3060
Telefax: +356 2131 3064
E-mail: info@bdo.com.mt
Website: www.bdo.com.mt

Partners:
John J. Attard       john.attard@bdo.com.mt
John A. Psaila      john.psaila@bdo.com.mt
Mark Attard         mark.attard@bdo.com.mt
Sam Spiridonov      sam.spiridonov@bdo.com.mt
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