

TAX12

TAX 12

Your Malta tax handbook
for the next 12 months.

ARQ Group
Ewropa Business Centre,
Level 3, Suite 701,
Dun Karm Street,
B' Kara, BKR9034,
Malta

Tel: +356 2549 6000

Status of information:
February 2019

The purpose of this handbook is to provide basic legal information for investors seeking to conduct business in Malta. The handbook is based on general principles of Maltese law and does not represent any kind of legal opinion. Should you require tax advice on a specific issue, please contact ARQ Group directly.

The contents of this handbook were compiled by ARQ Group on

the basis of information available and accurate as of February 2019. The reader should note that the information contained herein may change at short notice. ARQ Group disclaims any responsibility for the completeness and accuracy of the content of this handbook and for any subsequent changes.

For further information, please contact:

David Borg
Partner
dborg@arqgroup.com

Contents

03

Chapter 1
Malta's economy

11

Chapter 2
Forms of Organisations

19

Chapter 3
Corporate Taxation

35

Chapter 4
International Taxation

53

Chapter 5
Taxation of individuals

75

Chapter 6
Industry Incentives

Chapter 4

International Taxation



TAX 12

Your Malta tax handbook
for the next 12 months.

The Maltese Tax Refund System

Whilst the standard corporate tax rate in Malta is 35%, the effective tax rate could be reduced considerably through the Tax Refund System. This system allows shareholders to claim a refund of the tax paid on the dividend being distributed. There are four different refunds which would depend on the source of the income being distributed, and whether any double tax relief has been claimed. The refunds are:

6/7ths refund – applies to the distribution of chargeable income from trading activities, not mentioned below. The effective tax rate following the application of this refund is of 5%;

5/7ths refund – applies to the distribution of chargeable income derived from passive interest or royalties or from a participating holding which does not satisfy the conditions referred to in article 12(1)(u) (1). The effective tax rate following the application of this refund is of 10%;

2/3rds refund – applies to the distribution of chargeable income allocated to the Foreign Income Account and in respect of which the company has claimed relief of double taxation;

100% refund – applies to the distribution of chargeable income allocated to the Foreign Income Account which satisfies the Participation Exemption conditions.



This system allows shareholders to claim a refund of the tax paid on the dividend being distributed.

Event 1

Malta Trading Company chargeable income is taxed at 35%.

Event 2

Malta Trading Company declares a dividend and distributes such to its Holding / Shareholder.

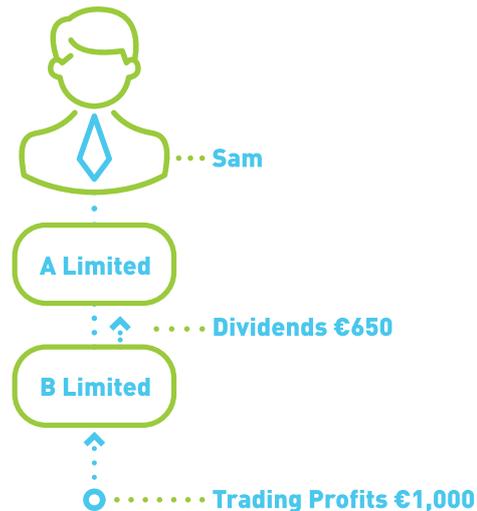
Event 3

6/7 of Corporation Tax is refunded by the Malta Government to the Holding/ Shareholder. Holding Company applies for and Malta Government grants tax refund. >

The Full Imputation System

Malta adopts a full imputation system, whereby the tax paid by the company is fully available as a credit in the hands of the shareholder on the dividend income received. This effectively eliminates any economic double taxation on the dividend, since the same flow of income is taxed only once, in the hands of the company.

Given that individuals are taxed at progressive rates, reaching a 35% rate on annual income of above €60,000, whilst companies are taxed at a flat 35%, the credit on the taxation of dividends could be higher than the Maltese tax chargeable on the shareholder. This could result in a tax refund due to the shareholder, subject to certain restrictions.



4.2

The Full Imputation System

(i) Tax at the level of B Limited

Chargeable income	€1,000
Tax at 35%	€350
	€650
Net dividends distributed by B Limited to A Limited	€650

(ii) Tax at the level of A Limited

Gross Dividend	€1,000
Tax at 35%	€350
Credit under Full imputation system	(€350)
Tax due	€0
Shareholder receives dividend of	€650

Participation Exemption

Malta's incentives extend to holding vehicles mainly on the basis of the Participation Exemption. A company that is registered in Malta may be entitled to an exemption on any income or gains from a participating holding or from the transfer thereof. The exemption has also been extended to income or gains derived by a company registered in Malta which are attributable to a permanent establishment situated outside Malta or to the transfer of such permanent establishment.

“Participating holding” shall mean a holding which arises where:

- A. a company directly holds at least 5% of the equity shares of a company, which holding confers an entitlement to at least 5% of any two of the following:**
 - i. right to vote;**
 - ii. profits available for distribution; and**
 - iii. assets available for distribution on a winding up; or**

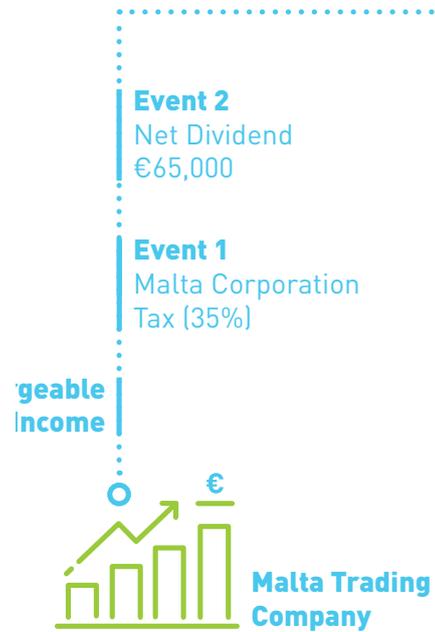
Participation Exemption

- B. a company is an equity shareholder in a company and is entitled to call for and acquire the entire balance of the equity shares; or
- C. a company is an equity shareholder in a company and is entitled to first refusal in the event of the proposed disposal, redemption or cancellation of all the equity shares of that company; or
- D. a company is an equity shareholder in a company and is entitled to either sit on the Board or appoint a person to sit on the Board of that company as a director; or
- E. a company is an equity shareholder which holds an investment representing a total value, as on the date or dates on which it was acquired, of a minimum of €1,164,000 for an uninterrupted period of not less than 183 days; or
- F. a company is an equity shareholder in a company, where the holding of such shares is for the furtherance of its own business and is not held as trading stock for the purpose of a trade.

With respect to dividends derived from a participating holding the exemption shall only apply when one of the following conditions are satisfied:

1. it is resident or incorporated in a country or territory which forms part of the European Union; or
2. it is subject to any foreign tax of at least fifteen per cent (15%); or
3. it does not have more than 50% of its income derived from passive interest or royalties.

Where none of the above conditions are satisfied, the exemption could still apply subject to the satisfaction of additional conditions.



4.4

Double Tax Relief

Apart from ensuring elimination of economic double taxation through the Full Imputation System, Malta also ensures elimination of juridical double taxation by virtue of its vast treaty network and also by virtue of its unilateral relief mechanisms.

Malta has various forms of mechanisms for the elimination of double taxation:

- 1. Treaty Relief;**
- 2. Unilateral Relief;**
- 3. Flat Rate Foreign Tax Credit (FRFTC);**
- 4. Commonwealth Relief.**

Although it is mentioned in income tax legislation, Commonwealth relief is not widely used and will not be covered in this handbook.

01. Treaty Relief

Treaty relief is relief from double taxation in terms of a double tax treaty which Malta has agreed to with another jurisdiction. Typically, for a person to benefit from provisions of a tax treaty, the person must be resident in one of the Contracting States which are a party to the treaty. Therefore, one of the eligibility conditions for this particular relief is that such a person is resident in Malta.

As opposed to the exemption method, Malta applies the credit method for elimination of double taxation, specifically the ordinary credit method. Through this method, the amount of any foreign tax paid which is available as a credit against any Malta tax due may not exceed the tax payable in Malta, that is, the person may never end up in a refund position as a result of applying this type of relief. Other conditions apply, such as having evidence of the foreign tax that was suffered. Claims must also be made within the two years following the end of the year of assessment referred to in the claim.

The list of countries with which Malta has a double tax treaty may be seen in Annex 1 of this handbook.

02. Unilateral Relief

Apart from relieving double taxation in situations where a double tax agreement is in place, that is bilaterally, Malta also relieves double taxation on a unilateral basis, even in situations when a double tax agreement would not have been signed.

Most of the conditions and procedures of unilateral relief are similar, if not, identical to Treaty Relief, the main difference being that under this type of relief no double tax agreement needs to be in place with the jurisdiction where the tax has been suffered.

03. Flat Rate Foreign Tax Credit (FRFTC)

Another form of unilateral relief, which is applied in specific circumstances to companies registered in Malta is the Flat Rate Foreign Tax Credit, more commonly referred to as FRFTC. The FRFTC is a credit for a deemed foreign tax of 25% of the amount of income received in Malta, applicable also in situations when no foreign tax was suffered. Apart from the fact that it is only applicable to companies registered in Malta, the FRFTC may only be applied on income which is allocated to the Foreign Income Account and a certificate is to be presented confirming that the income in respect of which the FRFTC has been claimed has been derived from foreign sources and falls to be allocated to the company's FIA.

Worked Example	€
Foreign income	1,000.00
Gross up of foreign tax deemed to have been suffered (25% x €1,000)	250.00
Chargeable income	1,250.00
Tax at 35%	437.50
Less: FRFTC	(250.00)
Tax payable (effective Maltese tax charge = 18.75% i.e. €187.50 / €1,000)	187.50

Chapter 5

Taxation of individuals



TAX 12

Your Malta tax handbook
for the next 12 months.

5.1

Residence and Domicile

Malta asserts jurisdiction to tax on the basis of territoriality, ordinary residence, domicile and remittance. Individuals who are ordinarily resident and domiciled in Malta are taxable on their worldwide income. On the other hand, individuals who are either domiciled but not ordinarily resident in Malta or ordinarily resident but not domiciled in Malta are taxable on Malta-sourced income and capital gains and any foreign source income which is received in Malta. Foreign sourced capital gains are not taxable in Malta (even if received in Malta) for such individuals.

Residence

Although the ITA does not incorporate a definition of the term 'ordinary resident,' it does define the term 'resident of Malta' in terms of being an individual who resides in Malta except for temporary absences which seem reasonable and not inconsistent to the Commissioner.

Therefore, a person can be resident in Malta without being ordinarily resident in Malta. Ordinary residence requires more than just residence; it requires residence in a place with some sort of continuity. Ordinary residence means residence which is part of a person's everyday life. To determine if a person is ordinarily resident in that country the following elements are usually considered: the duration of an individual's presence in the country, the frequency and nature of the individual's visits to the country as well as the nature of any personal or business ties that the individual has with the country.

Ordinary residence in brief consist of the following elements:

- **a regular physical presence in a country, i.e. residence which is part of the regular order of a person's life;**
- **residence with a degree of continuity, notwithstanding occasional temporary absences;**
- **residence.**

Domicile

The domicile of a person has been defined as being the country which is considered by law to be his permanent home.

There are three types of domicile which are:

- **Domicile of birth;**
- **Domicile of choice;**
- **Domicile by operation of law.**

At birth, every person receives a domicile of origin. Typically, it is the domicile of their father at the time of their birth. However, one may obtain a domicile of choice by actually residing in a country with the intention of seeking permanent or indefinite ongoing residence. The presumption of law is against a change of domicile and it is an established rule that anyone who tries to change their domicile must prove it. A domicile of origin can only be abandoned by obtaining a domicile of choice, but a domicile of choice can be abandoned by simply ceasing to reside in the country permanently. As soon as the domicile of choice is abandoned, the domicile of origin is revived.

Remittance Basis

With effect from the year of assessment 2019 (basis year 2018), non-domiciled persons are subject to a minimum annual tax of €5,000 in Malta.

This minimum tax is payable if the non-domiciled person:

- **is not taxable in Malta in accordance with a scheme establishing a minimum amount of tax in Malta, including the Residence Programme, the Global Residence Programme, the Malta Retirement Programme and the Residents Scheme Regulations; and**
- **derives income arising outside Malta amounting to not less than €35,000 or its equivalent in another currency – in the case of a married couple, one would have to look at the income derived by both spouses.**

In computing the minimum tax, account shall be taken of any Maltese income tax paid, whether by withholding or otherwise, excluding tax paid on capital gains.

Should the income, excluding capital gains, chargeable to tax in the hands of the non-domiciled person result in a Maltese tax liability amounting to less than the minimum tax, the person shall be deemed to have received additional income arising outside Malta such that the total tax liability on the total income would amount to the minimum tax of €5,000. By way of example, if a non-domiciled person would be liable to €2,000 of tax in Malta on income arising or received in Malta, he would have to top up that amount by another €3,000.

Special tax status

There are several programmes designed for EU and third country nationals wanting to obtain residence and/or tax residence in Malta.

EU Programmes

Economic Self Sufficiency

Thanks to the freedom of movement with the EU, any citizen of any member state can reside for a period of three months in another European country. At the lapse of the three months, the EU national needs to regularise himself/herself by means of a residence permit.

Qualifying criteria:

The applicant must show that he/she:

- **has stable and regular resources to maintain himself/herself and any dependents;**
- **is in possession of health insurance covering himself/herself and any dependents;**
- **has appropriate title to property in Malta (owned or leased).**

The Residence Programme

The Residence Programme (TRP) was introduced in 2013 following a high demand from EU individuals of high repute wishing to relocate Malta while at the same time benefitting from a tax incentive. TRP is a specific tax residence programme which results in a 15% flat rate for any foreign income received in Malta, subject to a minimum annual tax of €15,000.

Qualifying criteria:

The Applicant must show that he/she:

- is fluent in one of the official languages in Malta (Maltese and/or English);
- owns qualifying property in Malta (owned or leased) for the value of €275,000 (reduced to €220,000 if situated in the south of Malta or Gozo), or alternatively leases property of not less than €9,600 per annum (reduced to €8,750 if the property is situated in the south of Malta or Gozo);
- has sufficient resources to support himself/herself and any dependents;
- is in possession of health insurance covering himself/herself and any dependents.

Government fees: €6,000 administrative fees for each application

Malta Retirement Programme

The Maltese government introduced the Malta Retirement Programme (MRP) in 2012, with the objective of attracting EU/EEA and Swiss nationals of high repute who receive a pension as their primary and regular source of income. Applicants under this programme benefit from a tax incentive of 15% flat rate on the remitted pension to Malta subject to a minimum annual tax of €7,500.

Qualifying criteria:

The Applicant must show that he/she:

- is fluent in one of the official languages in Malta (Maltese and/or English);
- owns qualifying property in Malta (owned or leased) for the value of €275,000 (reduced to €220,000 if situated in the south of Malta or Gozo), or alternatively pays rent which is not less than €9,600 per annum (reduced to €8,750 if the property is situated in the south of Malta or Gozo);
- has sufficient resources to support himself/herself and any dependents;
- is in possession of health insurance covering himself/herself and any dependents;
- is in receipt of pension income that constitutes at least 75% of the total receivable income.

Government fees: €2,500 administrative fees for each application

Highly Qualified Persons

The Maltese government launched the Highly Qualified Persons Rules (HQP) in 2011 to attract experts from EU and Non-EU countries to fill specific roles within the aviation, gaming and financial services sectors. Recently, the HQP Rules have been extended to certain roles within the Assisted Reproductive Technology field. Through the HQP rules, the applicant is entitled to benefit from a tax incentive of 15% flat rate on the employment income generated in Malta for the specific role. The special tax rate applies for a consecutive period of five years for an EU/EEA national and for a period of four years for a Non-EU national.

Qualifying criteria:

The Applicant must show that he/she:

- holds recognised professional qualification in the relevant qualifying field;
- is employed within a company recognised by the relevant authority;
- receives a minimum income of €75,000 from a qualifying contract of employment;
- possesses health insurance covering himself/herself and any dependents;
- is not domiciled in Malta.

No government fees are applicable.

Non-EU Programmes

Global Residence Programme

The Global Residence Programme (GRP) was introduced in 2013 following a high demand from Non-EU individuals wishing to relocate Malta while at the same time benefitting from a tax incentive. GRP is a specific residence tax programme which results in a 15% flat rate for any foreign income received in Malta, subject to a minimum annual tax of €15,000.

Qualifying criteria:

The Applicant must show that he/she:

- is fluent in one of the official languages in Malta (Maltese and/or English);
- owns qualifying property in Malta (owned or leased) for the value of €275,000 (reduced to €220,000 if situated in the south of Malta or Gozo), or alternatively leases property of not less than €9,600 per annum (reduced to €8,750 if the property is situated in the south of Malta or Gozo);
- has sufficient resources to support himself/herself and any dependents;
- possesses health insurance covering himself/herself and any dependents.

Government fees: €6,000 administrative fees for each application

Malta Residence and Visa Programme

In 2014, the Maltese government introduced the Malta Residence and Visa Programme to grant Third Country Nationals and their dependants a permanent residence status in the Island. The programme is aimed at attracting Third Country Nationals of high repute who intend to invest in the island.

Qualifying criteria:

The Applicant must show that he/she:

- owns qualifying property in Malta (owned or leased) for the value of €320,000 (reduced to €270,000 if situated in the south of Malta or Gozo), or alternatively leases property of not less than €12,000 per annum (reduced to €10,000 if the property is situated in the south of Malta or Gozo);
- has sufficient resources to support himself/herself and any dependents;
- possesses health insurance covering himself/herself and any dependents.

Government fees: €30,000 administrative fees for each application

Other obligations:

- €250,000 investment in government stocks and bonds, to be kept for a minimum period of five years.

Highly Qualified Persons

The Maltese government launched the Highly Qualified Persons Rules (HQP) in 2011 to attract experts from EU and Non-EU countries to fill specific roles within the aviation, gaming and financial services sectors. Recently, the HQP Rules have been extended to certain roles within the Assisted Reproductive Technology field. Through the HQP rules, the applicant is entitled to benefit from a tax incentive of 15% flat rate on the employment income generated in Malta for the specific role. The special tax rate applies for a consecutive period of five years for an EU/EEA national and for a period of four years for a Non-EU national.

Qualifying criteria:

The Applicant must show that he/she:

- **holds recognised professional qualifications in the relevant qualifying field;**
- **is employed within a company recognised by the relevant authority;**
- **receives income from a qualifying contract of employment which qualifies under these rules of a minimum of €75,000;**
- **is in possession of health insurance covering himself/herself and any dependents;**
- **is not domiciled in Malta.**

