# MALTA

# 1. INTRODUCTION

## a. Forms of Legal Entity

The Company's Act provides for various types of entities such as a private limited liability company ("Ltd"), a public limited liability company ("plc"), an investment company with variable share capital ("SICAV"), an investment company with fixed share capital ("INVCO"), limited partnerships, general partnerships, and foundations. The most commonly used entity is the limited liability company which may be either private or public. A private company must include "Limited" or "Ltd" as the last word in its name. It may be exempt or non-exempt and it is also possible to have just one shareholder (referred to as a single member company). A private company must have less than 50 shareholders and the company must prohibit invitations to the public to subscribe for any shares or debentures. A public company ("plc") is defined as a company that is not a private company and therefore it may offer its' shares or debentures for subscription to the general public.

A partnership is a "look-through", transparent entity for income tax purposes whilst other entities have a distinct legal personality and are treated as a separate taxpayer.

## b. Taxes, Tax Rates

Both private and public companies are subject to tax at a standard rate of 35%. Certain investment income may be subject to a final tax rate of 15% whereas dividend income and capital gains may benefit from the participation exemption and therefore not subject to tax. The income tax rates for individuals are progressive and vary depending on the taxpayer's status as follows:

| From | To | Rate | Subtract (€) |
|---|---|---|---|
| Single Rates | | | |
| 0 | 9,100 | 0% | 0 |
| 9,101 | 14,500 | 15% | 1,365 |
| 14,501 | 19,500 | 25% | 2,815 |
| 19,501 | 60,000 | 25% | 2,725 |
| 60,001 | and over | 35% | 8,725 |
| Married Rates | | | |
| 0 | 12,700 | 0% | 0 |
| 12,701 | 21,200 | 15% | 1,905 |
| 21,201 | 28,700 | 25% | 4,025 |
| 28,701 | 60,000 | 25% | 3,905 |
| 60,001 | and over | 35% | 9,905 |

| From | To | Rate | Subtract (€) |
| --- | --- | --- | --- |
| Parent Rates | | | |
| 0 | 10,500 | 0% | 0 |
| 10,501 | 15,800 | 15% | 1,575 |
| 15,801 | 21,200 | 25% | 3,155 |
| 21,201 | 60,000 | 25% | 3,050 |
| 60,001 | and over | 35% | 9,050 |

Both companies and individuals may be subject to a final tax of 15% and this is normally applicable to investment income and certain rental income. Individuals may also be subject to a final tax of 10% on part-time employment income (up to EUR10,000 per annum in the case of part-time employment and up to EUR12,000 per annum in the case of part-time self-employment).

Transfer of immovable property is also subject to a final tax which varies between 2% and 10% of the consideration.

**c. Common divergences between income shown on tax returns and local financial statements**

The income tax computation included in the tax return / declaration is prepared on the basis of the company's audited financial statements which are prepared in accordance with IFRS as adopted by the EU or General Accounting Principles for Small and Medium Enterprises ("GAPSME"). Therefore, the starting point is the accounting profit before tax. However, various adjustments must be made to arrive at the chargeable income. The most common adjustments include depreciation, unrealised differences on exchange, fair value movements, provisions, donations, fines and penalties and income subject to the final taxation. Deprecation is substituted with capital allowances since the tax legislation allows for the wear and tear on certain assets at prescribed rates.

The tax legislation provides for a negative test and a positive test in order to determine whether an expense is allowable / deductible or not. The principle is that an expense must be incurred in the production of the income. Expenses which have not yet been incurred or expenses of a private or voluntary nature are not allowable.

## 2. RECENT DEVELOPMENTS

As a Member State of the EU, Malta adopted the EU Directives on Anti-Tax Avoidance, more commonly referred to as ATAD1 as well as ATAD2. Therefore, Maltese legislation has seen the introduction of interest deduction limitations, CFC and exit taxes. ATAD1 also includes general anti-abuse provisions but legislation already had similar provisions.

Apart from the EU Directives which Malta had to implement, Malta also signed and ratified the Multilateral Instrument ("MLI") and therefore tax treaties must be interpreted in the light of the MLI.

Due to the COVID-19 pandemic, the Maltese government introduced some financial aid to stimulate the Maltese economy and help businesses severely affected by the pandemic. The incentives include short-term wage supplements, grants to cover rental costs and electricity consumptions costs as well as guarantees to access financing. Stamp duty upon the purchase of immovable property has been reduced and the final tax due upon the sale of immovable property has also been reduced. The tax payment deferral scheme has also been made available to eligible businesses. Some incentives are being extended into 2022.

Malta also transposed Council Directive (EU) 2018/8222 ("DAC6") into national legislation and as a result, M&A transactions which are categorised as cross border arrangements may become reportable to the tax authorities. Reporting is not necessarily done in Malta but in any EU Member State affected by the reportable cross border arrangement. It must be classified under one or more of the hallmarks and other details as listed in the EU Directive reported to the tax authorities.

Malta is trying to delay the introduction of the minimum tax of 15% applicable to groups with a combined financial revenue of more than EUR750 million, but there are no indications that this will be successful.

## 3. SHARE ACQUISITION

### a. General Comments

The transfer of shares in a company must be notified to the Malta Business Registry within 14 days from the share transfer date and possibly to the National Foreign Direct Investment Screening Office. Failure to do so will result in the imposition of penalties for the late notification.

The definition of the word "transfer" is not limited to the transfer of shares from one person to another, but also includes: assignment, sale, emphyteusis, partition, donation, settlement of property on trust, distribution and reversion of property settled on trust, sale by instalments, any alienation under any title including any redemption, liquidation or cancellation of securities and any other transaction which results in "value shifting". Therefore, if a company issues and allots new shares but not in equal proportions to the existing interest, value shifting rules may apply.

The sale of shares may be subject to capital gains and added to the taxpayer's chargeable income, but an exemption applies if the transfer is made by a non-resident person and the Maltese company in which the share transfer is made does not have any immovable property in Malta. If the share transfer is subject to tax, a provisional tax is paid upon the filing of the necessary documentation with the Commissioner for Revenue. The capital gain is then computed and declared in the income tax return of the taxpayer together with any other income which is brought to charge. The provisional tax is given as a credit against the tax and any balance must be settled by the taxpayer together with any other tax liability.

Duty on documents is payable upon the filing of the share transfer documentation with the Commissioner for Revenue unless an exemption applies. A share transfer may be produced as evidence if the share transfer documentation has been filed and the relevant stamp duty paid.

### b. Tax Grouping and Tax Attributes

The tax legislation contains provisions for an exemption from the transfer of assets within a group. The transfer of securities may therefore qualify for this "group exemption".

It is possible for a group company to transfer trading losses to another group company if the two companies are considered to belong to the same group for income tax purposes. The group companies must be owned more than 50% by the same parent or one company is owned more than 50% by another company to be considered a group and enable the transfer of trading losses. The companies must also be tax resident in Malta and not tax resident elsewhere. The surrendering of trading losses must be made within the same tax year. Therefore, any losses brought forward or carried forward cannot be surrendered. Tax losses carried forward by the company may be utilised by the acquiring company only if the two companies are merged, unless the Commissioner for Revenue considers such merger as being a scheme in which case the anti-abuse provisions apply. Anti-abuse provisions apply when the transfer of losses to a group company arise from profits relating to immovable property situated in Malta.

In certain cross border transactions such as a redomiciliation of a foreign company to Malta (transfer of legal seat), a cross border merger and the change in a company's tax residence by moving the effective management and control, it is possible to have a step up in the value of assets held by the company. The step up is not subject to any tax in Malta, and the stepped-up amount may qualify for depreciation or amortisation.

It is also possible to have a group for VAT purposes (referred to as VAT Grouping). This is possible if at least one of the companies is exempt without credit and licensed by the relevant authorities.

The carry forward of tax losses may be challenged by the tax authorities following a share transfer even if there is no change in the company's activities. Past losses may never be surrendered and utilised by other group companies.

### c. Tax Free Reorganisations

Tax free reorganisations and exemptions are available under the "group exemption" referred to above in section b. The reorganisation or share transfers should not result in "value shifting" otherwise they may become taxable.

Other exemptions from capital gains apply if the transferor or seller is a non-resident person and the company does not own immovable property in Malta.

### d. Purchase Agreement

The buyer and seller (or transferee and transferor) must sign a share transfer agreement or a share purchase agreement and the company secretary or director of the company must submit the relevant statutory form or notification to the Malta Business Registry. Apart from the obligations to inform the Malta Business Registry, the buyer must submit the necessary documentation to the Commissioner for Revenue to pay the relevant duty on documents (or stamp duty) and the seller must submit the necessary documentation (also to the Commissioner for Revenue) to pay the relevant capital gains tax or obtain the exemption, if applicable.

### e. Transfer Taxes on Share Transfers (including mechanisms for disclosure and collection)

- Tax implications for the buyer:

Share transfers may be subject to duty on documents (more commonly referred to as stamp duty). However, exemptions from duty on documents apply if the company has more than 90% of its business interests or activities outside Malta. Other exemptions are available if the majority of the shareholders are owned and controlled, directly or indirectly, by non-resident persons. If the share transfer is not exempt, then duty on documents is computed on the market value of the shares. In practice, the market value is usually taken to be the Net Asset Value ("NAV") of the shares, adjusted to reflect the market value of any immovable property, any investment in another company and goodwill. Duty on documents is levied at EUR2 on every EUR100 of the market value, with the rate being EUR5 on every EUR100 if the company has more than 75% of its assets in immovable property situated in Malta.

- Tax implications for the seller:

The seller may be subject to tax on any gain realised from the disposal of the shares. The gain is computed by deducting the cost of the investment from the consideration or the market value of the shares, whichever is the higher. Prescribed rules are available to determine the market value of shares which are not sold on an open market. The transfer of shares by a non-resident person is exempt from capital gains tax if the company in which the shares are being transferred is not considered to be a property company because it has real estate in Malta. An exemption also applies to securities listed on a recognised stock exchange.

It is also possible for a group of companies to avail from an exemption from the payment of tax upon the transfer of shares if the ultimate ownership of the company does not change. It is pertinent to point out that any share transfer which is not exempt will take the original cost of investment to calculate the gain realised.

**f. "Purchase Accounting" Applicable to Share Acquisitions**

Following the transposition of the EU Single Accounting Directive, the default accounting framework for Small and Medium Sized Enterprises ("SMEs") is the GAPSME. Consolidated accounts qualifying for General Accounting Principles for Small and Medium Enterprises ("GAPSME"), are required to apply the purchase method for business combinations. Entities which do not qualify for GAPSME or opt out of applying GAPSME as the accounting framework for consolidated accounts, apply IFRS as adopted by the EU. In such cases, business combinations are accounted for using the acquisition method.

**g. Share Purchase Advantages**

Any change in the shareholding of a company does not have any impact on the tax base of the assets held therefore no opportunities are available in this respect. A step up is possible upon a redomiciliation or a change in the tax residence of a company (to Malta).

It is possible for a company to seek a tax clearance certificate from the tax authorities to confirm that no tax balances are due by the company. These are asked for, ,and given, after the completion of the transaction. If a tax clearance certificate is required before a transaction takes place, then this is done through a written tax confirmation or an advance revenue ruling ("ARR"), if applicable. ARRs are only issued in particular transactions which normally involve international business.

**h. Share Purchase Disadvantages**

A share transfer may be more onerous with respect to filing requirements than a transfer of an asset. The transfer of moveable property is normally done through a private agreement and it is only immovable property which requires a public deed done in front of a notary.

Another disadvantage of "non-exempt share transfers" is the calculation of the capital gain which requires the calculation of goodwill by taking the company's profits for the last five years and other adjustments.

## 4. ASSET ACQUISITION

**a. General Comments**

The transfer of assets is given effect by means of a private agreement and it is only immovable property which requires a public deed done in front of a notary. Certain assets such as trademarks and trade names and other intellectual property will require registration formalities.

The assets which are subject to capital gains are immovable property, securities, business goodwill and intellectual property. Other assets are not subject to any capital gains tax; duty on documents is only applicable on immovable property and securities.

As a general rule, the acquisition of an asset does not involve any taxes for the buyer unless the asset is immovable property or securities which may therefore be subject to duty on documents. No other taxes apply.

On the other hand, the seller, is subject to capital gains tax upon the transfer of certain assets. Capital gains are taxed together with other chargeable income and therefore the standard applicable tax rates apply. These are immovable property, securities, business, goodwill, business permits, copyright, patents, trademarks, trade names and any other intellectual property. Other assets are not subject to capital gains.

### b. Purchase Price Allocation

The proper purchase price allocation is important given that assets are not all subject to the same tax treatment, as well as the determination of the cost base which may be relevant for depreciation or amortisation. The purchase price is also relevant and necessary when the transfer involves an exchange for the same reasons. An exchange is considered as two transfers.

### c. Tax Attributes

Assets used in a business and on which capital allowances have been claimed are subject to a balancing statement. So, if the price paid for the assets exceeds the capital allowances previously claimed then the seller is liable to a balancing charge which is included in their taxable income and if the price paid for the assets is lower than the capital allowances previously claimed then the seller is entitled to claim a balancing allowance which can be offset against taxable income.

### d. Tax Free Reorganisations

As indicated above, the transfer of assets within a group is exempt.

Rollover relief provisions are also available if a business asset, and used for a period of three years, is replaced by another asset within one year and used for the same purpose.

### e. Purchase Agreement

The purchase agreement is a private agreement between the buyer and the seller and does not need to be registered unless the asset in question is immovable property situated in Malta.

The sale of assets may also trigger the obligation / requirement to issue an invoice as is required by the VAT Act.

### f. Depreciation and Amortisation

Assets such as industrial buildings (which include hotels and offices) and plant and machinery used in the production of the income, qualify for a tax deduction in form of capital allowances or wear and tear at prescribed rates using the straight-line method.

Intangible assets such as intellectual property and scientific research may also be depreciated / amortised for income tax purposes over their useful economic life. Goodwill is not deductible or allowable for income tax purposes and it may not be amortised for income tax purposes.

### g. Transfer Taxes, VAT

The transfer of assets may be subject to VAT (at the standard rate of 18%) unless the transfer is that of a going concern, in which case no VAT is applicable. If the sale is an intra-community supply, then it may also be possible to apply the reverse charge mechanism. In order to qualify as a transfer of a going concern, the sale must cover the whole business or at least a separate functional business operation and thus the relief does not apply to a supply of standalone assets and/or inventory only. The assets transferred must be used by the transferee to carrying on the same kind of business as that which was performed at the time of the transferor.

No other transfer taxes apply.

### h. Asset Purchase Advantages

Assets such as industrial buildings (which include hotels and offices) and plant and machinery used in the production of the income, qualify for a tax deduction in the form of capital allowances or wear and tear at prescribed rates using the straight-line method.

Intangible assets such as intellectual property and scientific research may also be depreciated / amortised for income tax purposes over their useful economic life. Also, business assets are transferred by means of a private agreement and only immovable property situated in Malta requires a public deed in front of a notary.

Asset transfers maybe subject to a step up in value / cost.

Finally, an asset transfer may not require tax due diligence unlike a share transfer which is often subject to tax due diligence. This is because in the case of an asset transfer, the tax history typically remains with the seller.

### i. Asset Purchase Disadvantages

The transfer of an asset does not give rise to particular disadvantages except that any tax losses which a company may have and which may have arisen from the ownership and use of the asset, cannot be transferred.

## 5. ACQUISITION VEHICLES

### a. General Comments

A special purpose vehicle ("SPV") may be used for both asset acquisitions as well as for share purchases, however vehicles are not typically used in Malta as none offer any particular incentive to the buyer or the seller.

However, an SPV, usually a limited liability company, may be used to "protect" or ringfence the asset in question.

### b. Domestic Acquisition Vehicle

An SPV may be used as a Domestic Acquisition Vehicle.

### c. Foreign Acquisition Vehicle

An SPV may be used as a Foreign Acquisition Vehicle.

### d. Partnerships and Joint Ventures

Partnerships and joint ventures are not considered as separate legal entities but are "look through" and are considered transparent for income tax purposes. As a result, it is the partners or the parties to the joint venture who are subject to tax.

### e. Strategic vs Private Equity Buyers

Apart from the group concept which apply for group relief provisions and VAT grouping, there are no particular differences when it comes to the application of tax rules in relation to transactions carried out by corporate groups or by private equity investors.

## 6. ACQUISITION FINANCING

### a. General Comments

Malta has implemented EU Anti-Money Laundering ("AML") directives and has regulations related to the Prevention of Money Laundering and Funding of Terrorism ("PLMFT"). As a result, banks invariably request supporting documentation especially if the amounts involved are not small.

### b. Equity

Unless a company is a regulated or licensed entity, there are no minimum capital requirements other than the normal minimum capital contained in The Companies Act. Malta does not have debt to equity ratios or thin capitalisation rules.

With the introduction of the Notional Interest Deduction ("NID") mentioned below, there is no tax advantage in financing operations through loans.

The NID rules provide for a more "equal treatment" for debt and equity financing by allowing companies and partnerships resident in Malta to claim for a deduction for the return on their risk capital against their chargeable income. The risk capital includes the share capital, share premium, reserves resulting from a contribution to the company, interest-free loans and any other positive equity components. The NID is calculated by multiplying the risk capital as at year end by the notional interest rate which currently is 7.12%. The maximum deduction cannot exceed 90% of the chargeable income before deducting the NID. However, if the company is trading in nature any excess is not lost as it may be carried forward to the following year.

### c. Debt

#### i Limitations on Use of Debt

Malta does not have any debt to equity ratio rules. Tax legislation provides that interest is allowable on capital employed in acquiring the income but there are no limitations as such on the use of the debt (e.g. working capital, capital expenditure, back-to-back).

#### ii Limitations on Interest Deductions

As a result of the implementation of ATAD1, an interest limitation rule came into force as of 1 January 2019. The new rules require that "exceeding borrowing costs" are deducted in the period when incurred subject to the higher of EUR3 million or 30% of EBIDTA. Exceeding borrowing costs is defined as the excess of deductible borrowing costs over taxable interest revenues and other economically equivalent taxable revenues. Malta has adopted the minimum standard thereby allowing the application of maximum possible deductions and exclusions in terms of the Directive.

#### iii Related Party Debt

Maltese laws do not distinguish between related party debt and third party financing arrangements, however, anti-abuse provisions may limit any arrangements considered to be artificial in nature.

Also, the Maltese tax authorities adopt the arm's length principle when considering related party debt. Malta is in the process of introducing Transfer Pricing Rules applicable to cross border arrangements as from 2024.

### iv Debt Pushdown

Since Malta has no thin capitalisation rules or debt to equity ratio rules, it is possible to push down debt by an assignment, transfer or contribution. Tax legislation provides that any interest payable on capital employed in acquiring the income is allowable for income tax purposes as long as the interest charged is at arm's length and in line with ATAD1 as explained above. No duty on documents is payable on the assignment, transfer or contribution of a debt and there are no limitations on debt pushdowns.

### d. Hybrid Instruments

Malta does not have any specific tax provisions to finance acquisitions through instruments such as convertible bonds or preferred stocks.

### e. Other Instruments

This section is left intentionally blank.

### f. Earn-outs

Earn-outs may be used in Malta but there are no specific tax provisions or rules on how to treat earn-outs for tax purposes and therefore it will be necessary to consider carefully and determine what is brought to charge and when, since the tax legislation presupposes that the consideration is known. If not, the tax authorities may take the market value.

## 7. DIVESTITURES

### a. Tax Free

Malta does not have any specific legislation for divestitures.

Divestitures resulting in gains arising outside Malta and derived by a company that is either not domiciled or not ordinarily resident in Malta are not subject to tax in Malta.

The Maltese tax legislation exempts gains realised by non-residents upon the transfer of units in Maltese collective investment schemes, similar investments relating to linked long-term insurance business, or shares in Maltese companies that do not hold immovable property (real estate) situated in Malta.

### b. Taxable

Where a divestiture by a Maltese company results in realised gains from the transfer of immovable property (real estate), shares (unless the participation exemption applies), business, goodwill, business permits, copyrights, patents, trade names, trademarks, any other intellectual property ("IP"), interests in a partnership, and beneficial interests in a trust, such capital gains are brought to charge with any other income.

A Maltese company in receipt of foreign source income or capital gains (which do not qualify for the participation exemption) may claim a Flat Rate Foreign Tax Credit ("FRFTC") of 25% so that the tax payable is reduced from 35% to 18.75%. Upon a distribution of such gains or profits, the shareholder may be entitled to claim a tax refund equivalent to two thirds of the tax paid by the company so that the combined overall Maltese effective tax ("COMET") is reduced to 6.25%. The COMET of 6.25% may be reduced even further if the company also claims the NID.

# MALTA

Malta's participation exemption applies to dividend income as well as to capital gains arising from the transfer of a participating holding investment.

If the equity investment made by a Maltese company qualifies as a participating holding, then any capital gains realised upon the disposal or transfer of such investment is exempt from any tax. An investment qualifies as a participating holding if any one of the following conditions is satisfied:

- The Maltese company has at least 5% of the equity shares in another company; or
- The Maltese company is an equity shareholder in a company and is entitled to purchase the balance of the equity shares of the company, or it has the right of first refusal to purchase such shares; or
- The Maltese company is an equity shareholder in a company and is entitled to either sit on the board or appoint a person on the board of that subsidiary as a director; or
- The Maltese company is an equity shareholder which invests a minimum of EUR1,164,000 (or the equivalent in a foreign currency) as at the acquisition date/s, and such investment is held for a minimum uninterrupted period of 183 days; or
- The Maltese company holds the shares in a company to further its own business, and the holding is not held as trading stock for the purpose of a trade.

The participation exemption is also applicable to dividend income received from a participating holding if the body of persons in which the participating holding is held, satisfies any one of the following three conditions:

- It is resident or incorporated in the EU; or
- It is subject to foreign tax of a minimum of 15%; or
- It does not derive more than 50% of its income from passive interest and royalties.

Alternatively, the equity investment must satisfy the following two conditions:

- The shares in the non-resident company must not be held as a portfolio investment;
- The non-resident company or its passive interest or royalties have been subject to tax at a rate not less than 5%.

**c. Cross Border**

The participation exemption applies to a participating holding investment irrespective of whether the equity investment is cross border or not. If the investment is cross border then the Flat Rate Foreign Tax Credit ("FRFTC") provisions may be applicable since the only condition for a company to claim the FRFTC is that the gain or income is foreign source and an auditors' certificate is presented to confirm that the income is indeed foreign source.

## 8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

### a. Worldwide or Territorial Tax System

Companies resident and domiciled in Malta are subject to tax in Malta on their worldwide income.

Companies which are not incorporated in Malta, are resident in Malta when their management and control is shifted to Malta. Such companies are subject to the remittance basis of taxation and hence are taxed on income and capital gains (unless exempt) arising in Malta as well as foreign source income which is remitted to Malta. Foreign income which is not remitted to Malta is not subject to Maltese tax.

### b. CFC Regime

Malta introduced CFC rules on 1 January 2019 as a result of ATAD1. The rules define a CFC as:

- An entity in which a Maltese resident taxpayer, alone or together with its associated enterprises, holds a direct or indirect participation of more than 50% of the voting rights, or owns directly or indirectly, more than 50% of the capital or is entitled to receive more than 50% of the profits of that entity; and
- The actual corporate tax paid by the entity is lower than the difference between the tax that would have been charged on the entity under the Income Tax Acts and the actual foreign tax paid.

A CFC also includes a permanent establishment of a Maltese resident taxpayer situated outside Malta which satisfies the second condition outlined above.

The income of a CFC will be taxed in Malta if, and to the extent that, the activities of the CFC that generate this income are managed by the Maltese corporate taxpayer as the people functions in relation to the activities of the CFC are performed by the Maltese corporate taxpayer.

Where an entity or a permanent establishment is deemed to be a CFC, the non-distributed income of the CFC which arises from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage are to be included in the tax base of the Maltese resident entity to the extent that the significant people's functions are carried out in Malta. The attribution of CFC income shall be calculated in accordance with the arm's length principle, computed in proportion to the taxpayer's participation in the CFC and is included in the tax period of the Maltese taxpayer in which the tax year of the CFC ends. Any tax paid by the CFC is allowed as a tax credit to the taxpayer.

The CFC rule applies only if:

- The CFC's accounting profits exceed EUR750,000 and non-trading income exceeds EUR75,000, or
- The CFC's accounting profits amount to more than 10% of its' operating costs.

### c. Foreign Branches and Partnerships

Income or capital gains derived by a Maltese registered company that are attributable to a permanent establishment (including a branch) situated outside Malta, are exempt from tax in Malta under the provisions of the participation exemption.

### d. Cash Repatriation

There are no cash repatriation restrictions, however the transfer of funds is subject to Anti-Money Laundering ("AML") provisions and Prevention of Money Laundering and Funding of Terrorism Regulations ("PMLFT") regulations.

Malta does not impose any withholding taxes on outgoing dividends, interest and royalties. Any withholding tax on incoming dividends, interest and royalties may be claimed as a tax credit against the Maltese tax.

## 9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

### a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Companies owning real estate in Malta (whether directly or indirectly) are referred to as property companies and although there are no special rules as such for these types of companies, they have to allocate the profits originating from the real estate to the Immovable Property Account ("IPA") or in some cases to the Final Tax Account ("FTA") and any distributions from such tax accounts (IPA and FTA), do not entitle any foreign shareholder to claim any tax refunds.

Apart from the above, the duty on documents or stamp duty on the transfer of shares in a property company amounts to EUR5 on every EUR100 or part thereof and not EUR2 on every EUR100 or part thereof as is the case for the transfer of shares of non-property companies. Also, an exemption from capital gains tax applicable to non-resident shareholders when transferring shares in a Maltese company, does not apply to property companies. However, an exemption applies if the shares are listed on a recognised stock exchange.

The Minister for Finance indicated that REITS ("Real Estate Investment Trusts") will be introduced to enable investors indirectly invest in real estate however to date no further details or draft bills are available.

### b. CbC and Other Reporting Regimes

Malta adopted the EU Council Directive 2016/881/EU (DAC4). The ultimate parent entity ("UPE") of an MNE group must prepare a CbC report for each fiscal year of the group commencing on or after 1 January 2016 and file the report within 12 months of the end of the fiscal year with the Commissioner for Revenue. An exception from this general rule applies where the MNE group has total consolidated revenues of less than EUR750 million in the immediately preceding fiscal period.

An MNE group should only be required to file a CbC report once for each reporting fiscal year, in the jurisdiction of its ultimate parent entity. However, there may be cases where a constituent entity (i.e. an entity within the MNE group) that is not the ultimate parent entity may be required to file the CbC report directly with its local tax authority (also known as "local filing") but only if one or more of the following conditions have been met:

- There is no obligation on the UPE to file a CbC report in its residence jurisdiction;
- There is an international agreement allowing automatic exchange of information between the jurisdictions of the UPE and the constituent entity but there is no competent authority agreement in effect providing for the automatic exchange of CbC reports (i.e the exchange relationship has not yet been activated);
- There has been a systemic failure by the residence jurisdiction of the UPE to exchange CbC reports that has been notified to the constituent entity by the local tax authority.

Constituting entities forming part of an MNE group are required to notify the Commissioner for Revenue the details of the ultimate parent entity which is responsible for the CbC reporting within the last day for filing of a tax return of that constituting entity for the preceding fiscal year.

## 10. TRANSFER PRICING

Malta has recently introduced an enabling provision in the Income Tax Act on transfer pricing and draft rules have been published by the Maltese tax authorities. In essence these follow the arm's length principle and it is expected that the methodology applied by the Commissioner for Revenue for the arm's length principle will be based on the OECD Transfer Pricing Guidelines.

## 11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

### a. Use of Hybrid Entities

Hybrid entities are not used in Malta.

### b. Use of Hybrid Instruments

Hybrid instruments are not used in Malta.

### c. Principal/Limited Risk Distribution or Similar Structures

Principal/limited risk distribution or similar structures are not available in Malta.

### d. Intellectual Property (licensing, transfers, etc.)

Any expenditure of a capital nature on intellectual property ("IP") may be amortised for tax purposes, provided the amortisation period is not less than three years and provided the IP is used or employed in the production of the income.

A Maltese company in receipt of foreign source licensing fees, royalties and other income from IP as well as foreign source capital gains arising from any disposals of IP, will entitle the Maltese company to claim a Flat Rate Foreign Tax Credit ("FRFTC") equivalent to 25% of the income / gains. The FRFTC claimed will increase the chargeable income, but the same amount may be claimed as a tax credit against the Maltese tax, thus reducing the standard income tax rate of 35% applicable to companies to 18.75%. Once the company distributes such income or gains as a dividend, the shareholder is entitled to claim a tax refund equivalent to two thirds of the tax paid (that is, 18.75%) and therefore the combined overall Maltese effective tax ("COMET") is reduced to a maximum of 6.25%. If the company has allowable expenses or NID, the COMET will be reduced even further.

In 2019 Malta introduced the Patent Box Deductions ("PBD") whereby a fiscal regime was announced for income arising from patents, similar IP rights and copyrighted software. The rules additionally provide that small companies may utilise the PBD rules on income from any intellectual property based on an invention that could be patented. A taxpayer qualifying for the PBD will be entitled to deduct a percentage of its income from taxable income. This deduction will be adjusted depending on the percentage resulting from dividing the qualifying IP expenditure by the total expenditure related to the particular IP.

**e. Special Tax Regimes**

Malta does not have special tax regimes and has moved away from ringfencing companies. However, companies may be entitled to claim tax deductions and tax reliefs such as the FRFTC referred to above. Another deduction is the Notional Interest Deduction ("NID"), which is calculated as a percentage (7.12% as at 31 March 2022) of the share capital, positive reserves and interest-free loans, details of which have been provided further above. Although certain limitations apply in both FRFTC and NID, the COMET or even the tax payable by the Malta company may be reduced significantly. The limitation with respect to FRFTC is that the tax credit cannot exceed 85% of the Malta tax and in the case of NID the limitation is that it is limited to 90% of the chargeable income.

A non-resident shareholder may also claim tax refunds upon the distribution of taxed profits from a Maltese company. The tax refund varies between two thirds, five sevenths and six sevenths of the tax paid on the dividend distribution.

## 12. OECD BEPS CONSIDERATIONS

Malta is not a member of the OECD and has not taken all of the BEPS action points on board. However, since some of the BEPS action points have been taken on board by the EU and found themselves in EU Directives, Malta has had to adopt the EU Directives and as a result, one may also say that Malta is adopting some of the BEPS action points, such as CFC rules and interest deduction limitation.

Malta deposited its instrument of ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") with the OECD, together with a list of reservations and notifications. Therefore, Malta's tax treaty network of over 70 countries will have to be interpreted in the light of the provisions of the MLI.

## 13. ACCOUNTING CONSIDERATIONS

The EU Single Accounting Directive 2013/34/EU, which repealed the fourth and seventh Accounting Directives on Individual and Consolidated Accounts, introduced a simplified procedure for financial statement reporting. This Directive was transposed into Maltese law. As a result, GAPSME is now the default accounting framework for SMEs in relation to financial reporting periods starting on or after 1 January 2016, unless a resolution is passed by the Board of Directors to the effect that IFRS (or the "International Financial Reporting Standards" as adopted by the EU) are to be used.

All domestic companies whose securities trade in a regulated market are required to use IFRS adopted by the EU in their consolidated financial statements.

Therefore, the accounting considerations of combinations and divestitures will be as provided for in IFRS as adopted by the EU or GAPSME as the case may be.

## 14. OTHER TAX CONSIDERATIONS

**a. Distributable Reserves**

Reserves of a revenue nature are distributable but reserves of a capital nature (e.g. share premium) and unrealised profits may not be distributable. However, it is possible to use capital reserves for a bonus issue and tax legislation provides that a bonus issue is tantamount to a dividend. Since Malta applies the full imputation system of taxation, dividends are generally not subject to any further tax in the hands of the shareholder.

### b. Substance Requirements for Recipients

The tax legislation does not contain any specific substance requirements, but the International and Corporate Tax Unit of the Inland Revenue Department will ask for a directors' declaration confirming that the effective management and control is in Malta before issuing a tax residence certificate. The tax authorities may also ask for copies of board minutes to confirm that board meetings are held in Malta and decisions taken by the board in Malta.

The so called "unshell directive" otherwise known as ATAD3 may change all this.

### c. Application of Regional Rules

The tax legislation does not contain special provisions for specific regions but the concept of regional rules, apply in the case of aid intensity measures and tax credits granted to businesses in the sister island of Gozo.

### d. Tax Rulings and Clearances

The tax legislation provides for tax rulings in the form of Advance Revenue Rulings ("ARRs") which are valid for five years and are renewable for further five year periods. Also, if there is a change in legislation affecting the ARR, the tax ruling remains valid for a period of two years. Apart from ARRs it is also possible to obtain tax confirmations and tax clearances.

However, the importance or use of ARRs has reduced drastically following the introduction of automatic exchange of information on tax rulings within the EU.

## 15. MAJOR NON-TAX CONSIDERATION

The Companies Act contains detailed provisions on mergers and acquisitions as well as divisions. There are various types of mergers and divisions: such as merger by acquisition; merger by formation of a new company; acquisition of one company by another which holds 90% or more of its shares; division by acquisition; division by the formation of new companies; division by a combination of a division by acquisition with a division by the formation of one or more new companies; and a division under the supervision of the court.

The EU Directive 2005/56/EC on cross border mergers of limited liability companies has also been implemented in Malta.

## 16. APPENDIX I - TAX TREATY RATES

Malta does not impose any withholding taxes on outgoing dividends, interest and royalties. Any withholding tax on incoming dividends, interest and royalties may be claimed as a tax credit against Maltese tax.

## 17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Typically in Malta we would recommend a minimum of the three latest years open to audit are reviewed during a tax due diligence process, however if possible, a review of the last five years is advisable.

| Nº | Category | Sub-Category | Description of Request |
|---|---|---|---|
| 1 | Tax Due Diligence | General | Details of tax contact person to discuss tax matters. |
| 2 | Tax Due Diligence | General | A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, current tax residence, entity type, class of shares, and ownership percentages. |
| 3 | Tax Due Diligence | General | Copies of the Company's audited financial statements (not abridged) together with all explanatory notes, any schedules and reports. |
| 4 | Tax Due Diligence | Income Tax | Copy of form DDT10 and related reply from Inland Revenue Department |
| 5 | Tax Due Diligence | Income Tax | Copies of the Company's income tax returns together with all prescribed schedules and attachments and the Tax Index of Financial Data (TIFD) and the relevant acknowledgements. |
| 6 | Tax Due Diligence | Income Tax | Workings of FRFTC optimisation and Notional Interest Deduction (NID). |
| 7 | Tax Due Diligence | Income Tax | Auditors' certificates to enable the Company claim FRFTC. |
| 8 | Tax Due Diligence | Income Tax | Shareholders' resolution to approve NID claim. |
| 9 | Tax Due Diligence | Income Tax | Proof of foreign tax suffered and claimed as credit under the unilateral relief or treaty provisions. |
| 10 | Tax Due Diligence | Income Tax | Any certificates for tax credits issued by Malta Enterprise. |
| 11 | Tax Due Diligence | Income Tax | Copies of Tax Statements issued by the Commissioner for Revenue. |
| 12 | Tax Due Diligence | Income Tax | Copies of any Adjustment Forms filed. |
| 13 | Tax Due Diligence | Income Tax | Copies of any Advance Revenue Rulings (ARRs) and / or tax confirmations issued by the International Tax Unit of the Inland Revenue Department. |
| 14 | Tax Due Diligence | Income Tax | Dividend warrants, supporting resolutions and tax refund claims submitted to tax authorities. |
| 15 | Tax Due Diligence | Income Tax | Any important communications with the Inland Revenue Department including correspondence with the Tax Compliance Unit. |
| 16 | Tax Due Diligence | VAT | Copy of VAT Certificate and details of VAT grouping. |
| 17 | Tax Due Diligence | VAT | VAT returns submitted to VAT Department, recaps (if applicable) and acknowledgements. |
| 18 | Tax Due Diligence | VAT | VAT statements showing payments and any outstanding balance. |
| 19 | Tax Due Diligence | VAT | Any important communications with the VAT Department. |
| 20 | Tax Due Diligence | FSS | FS7 submitted to the Inland Revenue Department and relevant acknowledgements. |

## FOR MORE INFORMATION CONTACT:

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