

DOING BUSINESS

IN MALTA



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business

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1 – INTRODUCTION

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in around 90 countries throughout the world.

Business partners work together through the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Malta has been provided by the office of UHY representatives:

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A detailed firm profile for UHY's representation in Malta can be found in section 8.

Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at September 2015.

We look forward to helping you do business in Malta.

2 – BUSINESS ENVIRONMENT

GEOGRAPHY

Located in the Mediterranean Sea, just south of Sicily, the Maltese archipelago basically consists of three islands – Malta, Gozo and Comino.

The largest island of the group is Malta, from which the archipelago takes its name. Valletta is the capital city and the main centre for the cultural, administrative and commercial activity of the islands. Malta is well-served with harbours, chief of which is the Grand Harbour in Valletta. Malta's international airport is situated five kilometres from the capital.

The second largest island, Gozo, is topographically quite different from Malta. Quaintly attractive for its quite way of life, Gozo can be reached from Malta by ferry-boat from Cirkewwa and Pieta, near Valletta, and by helicopter from the airport.

A BRIEF HISTORY

KEY FACTS ABOUT MALTA AND GOZO

Population	417,617 (2011)
Position	90km from Sicily and 180km from North Africa; this strategic position has allowed Malta to develop as an important trading post and Malta Freeport is one of the Mediterranean's leading ports for container transshipments
Area	316km ²
Topology	Malta is a relatively flat island with a coastline which has a number of natural harbours, creeks, sandy beaches and rocky coves
Religion	Largely Roman Catholic
Currency	The unit of currency is the Euro (EUR).

GOVERNMENT

Malta is a republic with a democratic system of government. The titular head of state is the president who is appointed by the House of Representatives. Legislative power lies in the hands of the House of Representatives which currently has 65 members drawn from the two major political parties. Elections are held every five years. Executive power is exercised by the prime minister and the cabinet. The prime minister is usually the party leader commanding the greatest support in the House.

LEGAL FRAMEWORKS

The legal structure is based on the civil-law pattern of continental Europe, though much legislation is also based on British laws. The Maltese courts have three principal jurisdictions – civil and commercial, criminal and voluntary and one court of appeal for all. Malta embraces the European Convention of Human Rights which forms an integral part of Maltese law.

LANGUAGE

The mother tongue of the islands is Maltese. However, it is also true to say that English is another native language due to the large span of years when the islands were subject to British rule. French, Italian and German are also widely spoken, with Italian being the most common due to the proximity with the Italian mainland.

CLIMATE

The climate, more than anything else, has made Malta an important tourist resort in the centre of the Mediterranean. There are really only two seasons in Malta – the dry summer season and the mild winter season. Rain rarely, if ever, falls during the summer months. The average annual rainfall is around 58cm (23 inches) and the average winter temperature is 12°C (54°F).

HEALTH SERVICE

Malta has excellent health services provided by both state and private hospitals. All hospitals are equipped with modern and up-to-date equipment. Therefore, most operations, including open heart surgery, are performed locally. In 2006, a new state hospital, one of the largest constructions in Europe at the time, was inaugurated.

THE ECONOMY

INTERNATIONAL TRADE

International trade, and in particular export activities, represent Malta's economic lifeline. Measures designed to increase the competitiveness of Maltese exports and to widen the range of incentives available to industrial investors are given priority.

The importance of this emphasis follows from the fact that, apart from its tourist attractions, Malta lacks natural resources and has to import a substantial part of all its requirements.

The Maltese have always been convinced that their future lay with exports. Exports of manufactured goods, along with tourism, transport-related services such as transshipment and ship repair, as well as financial services, are now the prime motors of Malta's economic growth and development.

Maltese goods make their way into practically every country of Europe, and also into North Africa and the near East. However the European Union consistently takes the lion's share of Malta's exports – followed by North America which is another significant market. Other important markets include the Gulf States and North Africa, while exports to South-east Asia are growing as the electronics industry develops and consolidates its operations.

ECONOMIC CONDITIONS

The Maltese economy, the smallest in the European Union (EU), has managed to survive the prolonged International financial crisis pretty well, with its financial system intact and winning international acclaim for the solidity of its banking system.

Malta is reputed to be one of the best EU member states in terms of adopting EU rules, enabling its citizens to gain from the benefits of the single market, according to a report presented by Internal Market Commissioner Michel Barnier in Brussels. Analysing the implementation of the various rules which govern the EU's EUR 500 million single market, the report gives a clean 'bill of health' to Malta and clearly states that the island is one of the best performers among the 27 member states.

Although relatively unscathed, Malta is not immune to the surrounding economic conditions. In 2011, gross domestic product (GDP) grew by 2.197% (compared with 3.7% in 2010) with a clear 0.7 basis points over the EU average. The annual rate of inflation in 2011 stood at 2.72% (compared with 1.51% in 2011), where the change was particularly due to the increase in International oil prices.

Unemployment in 2011 and the first quarter of 2012 averaged between 6.5% and 6.8%. The government maintains an ongoing review of human resources development in the public sector, aimed at improving systems and efficiency in public services. The Employment and Training Corporation (ETC) and the Malta College of Arts, Science and Technology (MCAST) provide specialised training in all employment sectors. The ETC is also the Government recruitment agency.

The Maltese economy is based on the free-enterprise system. While a major part of the economy is privately controlled, public utilities are mostly provided through government-controlled entities.

3 – FOREIGN INVESTMENT

INDUSTRIAL CLIMATE

Malta is an attractive location for both industry and investment.

With its central location in the Mediterranean Sea, modern infrastructure, adequate communication and transport networks, and a generally well-educated and flexible labour supply, Malta has many attractive attributes for an investor. In addition, advanced fiscal incentives, political stability and a safe environment in general are further advantages. All these features, combined with full membership in the European Union as of May 2004, make the Maltese archipelago an ideal stepping stone for anyone wishing to do business and tap markets in the EU itself, North Africa and the Middle East.

The industrial sector benefits from a comprehensive selection of competitive fiscal incentive packages. These incentives are typically administered by Malta Enterprise, which is an autonomous government entity operating specifically to promote, and subsequently assist, foreign direct investment in Malta. Support in Malta includes the provision of modern factories in ten public industrial estates and industrial parks at commercially attractive rents.

Malta Enterprise seeks to attract new foreign direct investment in high technology and high-quality export and service-orientated enterprises. Target sectors include electronics, pharmaceuticals, healthcare, plastics, rubber, engineering and other similar relatively capital-intensive areas generating a higher added value per employee. Malta will also be developing a communications free port area in order to attract telecom-intensive businesses.

The business sector consists predominantly of numerous family-run companies which fall below the size of average European small/medium enterprises (SMEs). There are also a number of other important manufacturing and service industries, as well as subsidiaries of (mainly) Western European companies. These subsidiaries account for most of Malta's export earnings.

BANKING AND FINANCE

Malta is definitely an old hand at banking; the sector goes back over a hundred years and traces its roots to the pre-British Colonial era.

Over the past few years, which have been characterised by a prolonged international financial crisis, Malta's banking system has emerged as an example of best practice and sound principles. The Maltese banking system has been a major pillar sustaining the country's economic development, providing both short- and long-term capital.

The Banking Act is in conformity with European Union directives and credit regulations. The Financial Institutions Act regulates institutions that do not take deposits or other repayable funds from the public. There are six commercial banks including HSBC, Bank of Valletta, Banif Bank, APS Bank and Lombard Bank.

THE CENTRAL BANK

The Central Bank carries out the usual basic functions. These include controlling the issuing of bank notes, acting as a banker to the government and the banking system, and managing official foreign-exchange reserves. The Central Bank advises the government on monetary and economic policy.

A significant part of the statutory roles and responsibilities have now devolved to the Malta Financial Services Authority, while the Central Bank has retained its traditional statutory role as the monetary regulator.

MALTA FINANCIAL SERVICES AUTHORITY (MFSA)

All banks and financial institutions operating in Malta fall under the supervision of a single regulatory body – the Malta Financial Services Authority (MFSA) – which in the recent past, took over some of the responsibilities pertaining to the Central Bank. The MFSA has inherited the supervisory role of financial institutions including banking, insurance and investment institutions. The MFSA executes this role in accordance with EU directives which can be found entrenched in Maltese legislation and which comply with recommended international practices. The MFSA requires all the financial institutions under its supervision to submit regular periodic returns containing financial data and information on their business. These returns are in turn shared with the Central Bank in view of its role with regards to monitoring the economy and also that of banker and financial advisor to the government.

INVESTMENT POLICY

A country barren of natural resources, since Independence from British rule in 1964, Malta has always actively sought foreign direct investment (FDI).

In support of this drive to attract FDI, investment incentives are continuously updated and aimed at specific sectors the country is keen to promote, such as the financial services sector, pharmaceuticals, information and communications technology (ICT) and biotechnology, to name just a few.

The main industrial incentives are subject to the approval of the Malta Enterprise (ME). In appraising a project proposal, ME takes into account various factors including its viability, the processes involved, the size of the capital investment, the sources of finance, the employment to be generated and the established overseas export markets. For the purposes of industrial incentives, Malta is considered as one region. However, 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, free port activities and financial services.

Investment incentives and opportunities are directed towards foreign and local investors alike who demonstrate commitment towards growth, increased added value and employment. Incentives are offered through a combination of structured schemes and access to EU-funded programmes.

INTERNATIONAL FINANCE OPERATIONS

Maltese law provides for a favourable fiscal framework for the provision of financial services.

All financial services in Malta are regulated by the Malta Financial Services Authority (MFSA).

The country's International Financial Centre had already made a name for itself in offshore legislation, which was totally overhauled and revised in 1994. At this time, the offshore legislation was phased out and a new regime was established providing a regulated and attractive international business centre.

The entire range of financial services provided in Malta is regulated by the Investment Services Act, with a particular focus on collective investment schemes (CIS). A licence from the MFSA is necessary to operate a CIS and to provide investment services

All companies are regulated by the Companies Act (CA). The Companies Act provides, amongst other matters, for investment companies with variable share capital (SICAVs) and also companies whose share capital is denominated in foreign currency. The CA also provides for nominee shareholding in Maltese companies, provided that the entity effecting nominee functions is licensed by the MFSA

Trusts may be registered with the MFSA under the Trusts Act. Specific conditions regarding property, the settler and the beneficiaries have to be satisfied. The MFSA is legally bound to retain confidentiality over the contents of the trust deed.

Other laws relevant to financial and investment services include the Banking Act, the Insurance Business Act, the Professional Secrecy Act, the Insider Dealing Act and the Money Laundering Act.

BORROWING

Companies registered in Malta are free to borrow from their overseas parent company, other group companies or other external sources in any foreign currency they prefer. The Central Bank must be notified of the borrowing and the terms of the loan. Evidence of receipt of funds from abroad must subsequently be submitted to a commercial bank. Loan repayments and payment of interest, if any, may then be effected easily as and when due.

Loans and other facilities may also be obtained from local banks in either local or foreign currency. In the case of loans in Euro to Maltese-registered companies controlled by non-residents, no restrictions apply for credit facilities in connection with current account transactions. However, facilities in respect of capital account transactions are restricted to specific expenditures. No restrictions apply in the case of facilities in foreign currencies for current / capital expenditure to Maltese-registered companies controlled by non-residents.

CURRENCY ACCOUNTS

Non-residents may hold interest-bearing foreign-currency accounts with the banks and funds in these accounts may be transferred abroad freely.

REPATRIATION OF CAPITAL AND EARNINGS

Earnings from business activities can be freely remitted outside Malta. There are no restrictions on the repatriation of capital, whether through the transfer of shares or on the winding up of a company, provided that the capital was originally brought into Malta from abroad. There are no restrictions on payments with respect to interest, royalties and know-how, or management and service fees by a Maltese company to a non-resident company.

Maltese companies are not allowed to net payments due from non-residents against other payments due to non-residents, but offsetting operations are possible with the consent of the Central Bank.

BILATERAL INVESTMENT TREATIES

Malta has concluded bilateral trade and investment agreements with several countries. Malta subscribes to the Multilateral Investment Guarantee Agency, a specialised institution of the World Bank. In addition, Malta has concluded investment protection agreements with various countries.

REGULATION OF BUSINESSES

The Department of Trade is responsible for regulating commerce and industry.

The Department, which falls within the Trade Section of the Ministry for Finance and Economic Affairs, is also responsible for patent, trademark and copyright matters. Businesses may require licences from various departments besides the Department of Trade, including the police and the public health authorities in relevant cases. Authorisation for conducting investment and financial services is issued by the Malta Financial Services Authority.

COMPETITION POLICY

PRICE CONTROLS

The price of most commodities is set according to market forces, although there are regulatory structures to protect the consumer and ensure fair pricing. The price of public utilities is set by the government.

MONOPOLIES AND ANTITRUST

Because of the size of the country, well-established firms often have a virtual monopoly in their line of business. The state itself maintains a monopoly in strategic fields such as energy and fixed telecommunications, which are still considered to require national control.

The Competition Act prohibits business agreements and concerted practices that prevent, restrict or distort competition. Exemptions from this rule apply where the impact on the market is minimal. The Director of Fair Competition may grant exemptions in specific cases and according to specific conditions as allowed by regulations prescribed under the Act. The law also prohibits agreements and practices that constitute an abuse of the dominant position of one or more undertakings. Businesses may request the Director to declare, by means of a negative clearance, that any specific agreement or practice is not prohibited by the Act.

ACQUISITIONS AND MERGERS

The Companies Act lays down the legal requirements and procedures for mergers. It does not recognise mergers between local and foreign companies. A merger must satisfy the rules on fair competition under the Competition Act. In an application for a negative clearance, the Director will examine, in particular, whether the merger would prevent, restrict or distort competition or create a dominant position in Malta or in any particular market.

SECURITIES MARKET

Malta has a small stock exchange, which is regulated by The Malta Stock Exchange Act.

IMPORTS AND EXPORTS

Imports are generally unrestricted. In particular, there are no difficulties concerning the importation of raw materials and equipment required by industry. Restrictions may apply on imports from certain countries, which may be prohibited in accordance with restrictions set by the Security Council of the United Nations. Other imports may be restricted and subject to controls due to the nature of the goods being hazardous or requiring sanitary controls.

Exports are free of controls with some exceptions, primarily items of cultural value such as antiques and works of art.

CONSUMER PROTECTION

The Consumer Affairs Act regulates various aspects of trading in the marketplace. Among other things, the law establishes a Consumer Affairs Council that is responsible for promoting consumer interests and deals with the functions of the Director of Consumer Affairs. The Director investigates complaints made by consumers about goods or services provided by traders, monitors trading practices and takes measures to suppress or prevent any practices that may be of detriment to consumers.

Three departments, those of Health, Trade and Agriculture, are actively engaged in regulating the food and drug industries. Such matters as additives, ingredients, quality, hygiene, processing, labelling and packaging are subject to stringent regulations.

EXPORTING TO MALTA

IMPORT RESTRICTIONS

Imports in Malta are subject to natural market forces and are generally free from any volume-based quotas or restrictions. There are no item restrictions except for particular items such as firearms. The clearance of certain goods – such as pharmaceuticals, foodstuffs, plants and livestock, chemicals, firearms and explosives – requires a special clearance procedure. An import licence is required for the importation of certain goods, including new cars.

Goods which may not be sold in Malta, such as goods that are in breach of the law on trademarks or copyright, or that do not satisfy safety regulations, will not be released and must be re-exported.

There are no restrictions on trade with any country except for restrictions sanctioned by the Security Council of the United Nations.

IMPORT DUTIES

Imported goods are subject to common external tariffs for goods not originating from the EU. The tariff and VAT thereon is payable on the release of the goods. Goods that are placed under a customs procedure are not subject to duty. Customs procedures include exports (whether before or immediately upon release), temporary importation, inward and outward processing, internal and external transit, and the processing of goods under customs control.

FREEPORT

Goods imported into the Malta Freeport are not subject to duty unless they are removed from the free zone. The Freeport is specifically designed for trans-shipment purposes. Authorisation may be obtained from the Malta Enterprise for exemption from import duties and value added tax in respect of the importation of raw materials and supplies to be used for industrial processing or incorporation into manufactured articles for export.

DUTY

Duty is payable on the transaction value, including commissions, the cost of transport and insurance to the place of importation, handling charges and similar costs. When goods are sold before they are released, the duty is assessed by reference to the value of the last sale. The rate depends on the classification of the goods under the Harmonised System Code.

OTHER TAXES

The other taxes on imports are VAT, excise duty, the motor vehicle registration tax and protective levies.

SOURCES OF INFORMATION

Malta has resident ambassadors and high commissioners in 20 major countries. Malta Enterprise (the national business development Corporation) has resident representatives in a number of countries. Malta also runs two business centres, one in London and one in Milan. Information and assistance may be obtained from these sources.

Information about government policy on importation into Malta in general, as well as on particular items, is available from the Director of Trade, the commissioner of VAT, the Comptroller of Customs, the Ministry for Finance and the Ministry for Economic Services. All government authorities may be contacted through the Maltese Government website www.gov.mt.

4 – SETTING UP A BUSINESS

FORMS OF BUSINESS ENTITY

Three types of business organisations may be incorporated in Malta, namely:

- A limited liability company
- A general partnership (*partnership en nom collectif*)
- A mixed liability partnership (*partnership en commandite*).

All these forms acquire a distinct legal personality as soon as they are incorporated.

Registration takes place with the Registrar of Companies where the business entity is registered under the Companies Act (CA). A foreign corporation that carries on business in Malta must register its branch under the CA and is referred to as an 'overseas company'. The branch is not recognised as a separate entity and is not incorporated as such. The Act also recognises a joint venture (under *associations en participation*) but a joint venture is not required to be registered and is not vested with a distinct legal personality.

LIMITED LIABILITY COMPANY

A limited liability company is formed by means of capital divided into shares.

The liability of the shareholders is limited to the amount of the shares held. This is the form of organisation favoured by large enterprises and usually preferred by foreign investors. A company may be incorporated either as a public company or as a private company.

A company is a private company if its statute limits the number of its shareholders to 50, provides for restrictions on the transfer of shares and prohibits any invitation to the public to subscribe for shares or debentures. The vast majority of companies in Malta are registered as private companies. A private company may further qualify as an exempt company if it restricts the number of debenture holders to 50 and prohibits the holding of any of its shares or debentures by another company that is not itself an exempt company. A private and exempt company enjoys certain privileges as to the details of its published financial statements and has the right to give loans to its directors. A company must have at least two shareholders but a private and exempt company may be formed as a single member company.

FORMATION PROCEDURES

A company is constituted by virtue of a memorandum of association, which must, as a minimum, contain the following:

- Name of the company
- Its registered office in Malta
- Objectives of the company, which cannot be described as trade in general
- Particulars of the shareholders and their respective subscriptions
- Description of the authorised and of the issued share capital
- Particulars of the company secretary.

Together with the memorandum, the subscribers/shareholders may also register articles of association prescribing regulations for the company. However, the model regulations contained in the Companies Act apply to a company regardless, and are not replaced by articles of association. The memorandum and articles of association are usually drawn up by accountants and/or lawyers.

The memorandum and articles of association are delivered to the Registrar of Companies together with proof of the introduction of capital, and details of who will scrutinise and approve the memorandum and articles then register the company and issue a certificate of registration. The company thereupon comes into existence and is capable of commencing business. The fee structure for registration is based upon the authorised share capital.

When shares or debentures are issued by a public company, the application forms for shares or debentures must be accompanied by a prospectus that sets out detailed information relating to the following:

- The company and its activities
- The offer to the public and its purpose
- Directors and their remunerations payable on application and allotment. The costs of the offer prospectus must also be included in a report by the auditors of the company.

The address of the registered office of the company, the form of business organisation and the registration number must be stated in all letters and documents issued by the company. When a company is being wound up, this fact must also be stated.

CAPITAL STRUCTURE

The share capital of a private company cannot be less than EUR 1,165. When the share capital is the minimum authorised, it must be fully subscribed in the memorandum of association. When it is more than the legal minimum, at least EUR 1,165 must be subscribed. Not less than 20% of the par value of each share taken up must be paid upon the signing of the memorandum. There are no statutory limits regarding the maximum amount of the authorised share capital of a company, and no special permits are required to go beyond any given limit. Shares may be of any amount, but the most common unit is EUR 1. Shares of no par value are not allowed, except in the case of investment companies with variable share capital (SICAVs), which are regulated by specific provisions in the law.

Shares may be issued at a premium, and the proceeds of the premium must be placed in a share premium account. A company's memorandum and articles of association may permit the company to purchase its own shares, but this is subject to certain limitations and conditions. Shares may be of different classes, having different voting, dividend and other rights. All shares must be registered. A private company is not permitted to issue bearer shares. Ordinary shares are shares that participate in the profits of the company and are not restricted to a fixed dividend. Preference shares may be participating or non-participating, cumulative or non-cumulative, voting or non-voting. The company may be authorised by its memorandum or articles of association to issue redeemable shares. Redemption can be made only out of that part of the company's profits that would otherwise be available for the payment of dividends or out of the proceeds of a fresh issue of shares made for the purpose of redemption. No redemption can be put into effect unless the shares have been fully paid up. If any premium is payable upon redemption, it must be provided out of the company's profits or its share premium account.

A share transfer must be registered with the Registrar by submitting the statutory form. The form must first be delivered to the Commissioner of Inland Revenue who will certify that the stamp duty on the transfer has been paid or that the transfer is exempt from stamp duty. The stamp duty rate is 5% for property companies and 2% in other cases. No stamp duty is payable on the issue of new shares. A company can at any time increase or decrease its capital. When a reduction involves either a diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, it will only take effect three months after a notice is published in the government Gazette and as long as no creditors file valid objections. The company may capitalise reserves and profits that are otherwise available for distribution by the issue of fully paid bonus shares to its shareholders. The share premium account can only be reduced in the same manner as the paid-up share capital of the company. The share premium account can, however, be utilised by the company for the issue of shares to the shareholders as fully paid bonus shares, or to write off preliminary expenses or expenses connected with the issue of debentures or to provide for the premium payable on the redemption of any redeemable shares or debentures of the company.

DIRECTORS' RESPONSIBILITIES

The business of a company is conducted by its directors. Public companies must have at least two directors but private companies can have a sole director. The directors need not, unless so required by the memorandum and articles of association, be holders of any shares in the company. The shareholders may remove a director by means of a simple majority. Any breach of duty can result in a personal liability of the directors for administrative penalties and civil damages. Directors can be exposed to criminal prosecution in the case of fraudulent or unlawful trading or other offences linked to fraudulent insolvency.

SECRETARY

Every company must appoint a secretary, who may also be a director. However, a sole director may not also be the secretary. The secretary is an officer of the company.

STOCK EXCHANGE

In order to promote best practice in transparency, accountability and fairness in the governance of companies, the Malta Stock Exchange approved the 'Code of Principles of Good Corporate Governance' in 2001. The Code applies specifically to all companies with securities listed on the Official List and/or the Alternative Companies List of the Malta Stock Exchange, with the exception of collective investment schemes. Compliance with the Code is not of a mandatory nature, but public companies are required to disclose the extent to which they comply with the Code. Auditors are also required to report on the 'statement of compliance' drawn up by the company directors in the Company's annual report.

SHAREHOLDERS' MEETINGS AND VOTING RIGHTS

Each company is required to hold its first general meeting not later than 18 months after its registration. Thereafter, the company must hold a general meeting each year and not later than 15 months from the date of the previous annual general meeting.

DIVIDENDS

Dividends may be declared by the shareholders' general meeting. No dividend can, however, exceed the amount recommended by the directors. Interim dividends may from time to time be paid by the directors in such amounts as appear to them to be justified by the profits of the company. Dividends can be paid only out of distributable profits, defined by the law as realised profits. There are no final withholding taxes on dividends

LIQUIDATION

Liquidation procedures start with a resolution of the company or an order of the court to dissolve the company. Liquidation may take the form of a voluntary winding up, which may be a shareholders' or a creditors' winding up. A shareholders' winding up is only possible in the case of a solvent company. A company may also be wound up by the court. The Companies Act lays down detailed procedures for the different forms of winding up of companies, including rules on the obligations of liquidators and official receivers, on fraudulent and wrongful trading, on the liability of directors and shareholders, and on special powers of the court. The Companies Act also contains provisions on company reconstructions and company recovery procedures.

GENERAL PARTNERSHIP

A general partnership (*partnership en nom collectif*) has its obligations guaranteed by the unlimited, joint and several obligations of all the partners.

It is formed by a deed of partnership, which must be delivered to the Registrar for registration. Changes in the deed of partnership, the introduction of new partners or the withdrawal of any existing partners must also be reported to the Registrar. The rights of third parties are protected by law in case of withdrawals from or additions to the partnership.

MIXED LIABILITY PARTNERSHIPS/OTHER ENTITIES

JOINT VENTURE

The Companies Act recognises a form of joint venture under the rules on *association en participation*. The association comes into existence under an agreement whereby a person (the associating party) assigns to another person, for a valuable consideration, a portion of the profits and losses of a continuing business or of one or more commercial transactions. In relation to third parties, the venture is deemed to belong to the associating party. No registration is required for this type of association.

COOPERATIVE

A body of persons may be incorporated as a cooperative society under the Cooperative Societies Act. Government agencies and other public bodies are usually referred to as corporations or authorities and are typically constituted by an Act of parliament. Both cooperative societies and corporations set up by law have a distinct legal personality.

CIVIL PARTNERSHIP

Professional and other non-commercial partnerships are referred to as civil partnerships and are regulated by the Civil Code. The Companies Act replaced the Commercial Partnerships Ordinance in 1995, but shipping companies continue to be regulated by the Ordinance. There are no provisions requiring these Maltese companies to have any minimum subscription by Maltese shareholders or to appoint Maltese directors. The acquisition of shares by non-residents, however, requires exchange control approval.

5 – LABOUR

Any non-resident person taking up employment in Malta needs to apply for a work permit.

Therefore, a foreigner taking up employment would require employment permission, which has to be applied for by his/her employer. The individual must then regulate himself/herself at immigration once the work permit (employment license) is issued.

EU citizens will be granted a work permit if such issuance does not go against public health, public policy or public security interests.

An EU citizen who takes up residence is subject to tax.

An individual may obtain a certificate from the Inland Revenue Department, which is issued for an indefinite period as long as certain annual conditions and obligations are met.

There are different schemes in force and further details may be obtained upon enquiry.

EU citizens do not pay VAT and import duties when they import their household effects as long as these are VAT paid in their country of origin. Non-EU citizens pay VAT and import duties when they import their household effects (excluding cars). They may initially be required to pay a deposit or lodge a bank guarantee covering the amount of duty/VAT, which will be refunded upon the expiry of 200 cumulative days in Malta.

Residents can import their car, but this is always subject to full registration tax for all citizens and VAT for cars originating from outside the EU.

Foreigners have to pay any deposits for water, electricity and telephone services, except when the applicant is an EU citizen, where no deposits are taken. However, non-EU citizens are requested to deposit specific amounts for telephone and water and electricity.

6 – TAXATION

PRINCIPAL TAXES

The principal taxes under Maltese law are:

- Income tax, which includes tax on income and on capital gains of individuals, companies and other entities
- Value added tax
- Duty on documents and other transfers (stamp duty), including tax on the inheritance of property and shares
- Customs duty
- Excise tax.

As of May 2004, the imposition of levies on the importation of certain products (for the protection of local manufacturing) has been largely phased out in line with EU policy.

Other taxes in Malta include the motor vehicle registration tax, the oil bunkering tax, a number of licence and registration fees and the recent addition of the Eco-Tax which is focused on safeguarding the environment.

Social security contributions are payable by employees and their employers and by self-occupied and self-employed persons. There is no tax on capital, other than stamp duty and there are no local taxes.

INCOME TAX

The laws regulating income tax are the Income Tax Act (ITA) and the Income Tax Management Act and Subsidiary legislation.

Other provisions relevant to income tax are contained in a number of other laws, such as the exemption for Maltese-registered ships under the Merchant Shipping Act, tax incentives under the Business Promotion Act and certain tax consequences arising from mergers and divisions under the Companies Act.

Income tax is levied on chargeable income in general and on certain specified capital gains. Income under the Act is categorised under the following headings:

- Income from a trade, business, profession or vocation
- Income from an employment or office position
- Dividends, premiums, interest or discounts
- Pension, charge, annuity or annual payment
- Rents, royalties, premiums and any other profits arising from property income
- Capital gains are subject to tax if they are derived from the transfer (including any alienation under any title) of:
 - Immovable property
 - Securities, defined as shares and stock and such like instruments that participate in any way in the profits of a company and whose return is not limited to a fixed rate of return, units in a collective investment scheme and units and such like instruments relating to linked long term business of insurance
 - A business, a goodwill, a copyright, patents, trademarks and trade names
 - Any rights over any of the above assets.

There are different rules for determining the taxable amount of income and the taxable amount of capital gains. Similarly, certain provisions apply or do not apply in the computation of the taxable amount falling under specific categories of income or capital gains. But the tax is charged on a unitary basis and, as a rule, a taxpayer is liable to one tax on the total amount of his taxable income and capital gains for the respective year. Saving those cases where special rules apply, 'income' is used to denote income and capital gains.

PERSONS/CORPORATIONS SUBJECT TO TAX

Tax is charged on the income and capital gains of every person. Under the ITA, a 'person' includes an individual, a company and any other body of persons. The law does not distinguish between the different forms of 'persons' and there is no separate law for the taxation of corporations.

YEAR OF ASSESSMENT

Tax is charged for every calendar year (year of assessment). As a rule, the income chargeable to tax for a year of assessment is the income for the preceding calendar year but the basis period for companies whose financial year does not end on the 31 December is, subject to the authorisation of the Commissioner of Inland Revenue, the financial year ending in the year proceeding the year of assessment. A number of provisions require taxpayers to make payments of tax on account of their tax liability for a year of assessment during the basis period.

BASIS OF TAXATION

Persons who are ordinarily resident and domiciled in Malta are liable to tax on their worldwide income and capital gains. A person who is resident but not ordinarily resident and domiciled in Malta is subject to tax on income and capital gains arising in Malta and on income (but not capital gains) arising outside Malta and received in Malta. A person who is not resident in Malta is subject to tax on income and capital gains arising in Malta.

DEDUCTIONS

GENERAL RULES

In the determination of the taxable income, a taxpayer is allowed to deduct expenses and outgoings to the extent that they are incurred wholly and exclusively in the production of the income. This test requires a very close connection between the expense and the income against which it is claimed, and it is not enough to show that the expense is a business expense or that it is connected with the income. The law disallows expenditure of a capital nature or for a capital purpose (except in the computation of taxable capital gains). This general rule is subject to a number of specific provisions, some of which are described below.

INTEREST

Interest on any borrowed money is an allowable deduction if it is paid on capital employed in acquiring income.

BAD DEBTS

Deductions are allowed for bad debts incurred in a trade, business, profession or vocation. Bad debts of an income nature are allowed in the year they become bad if proved to the satisfaction of the tax authorities. Bad debts of a capital nature may be allowed as a deduction against capital gains (see below). Any bad debt that is later recovered is deemed as income for the year in which it is received.

LOSS INCURRED

Losses incurred in a trade, business, profession or vocation are allowable as a deduction against income from any other source and against capital gains. If they cannot be absorbed by income and capital gains for the year, they are carried forward indefinitely to be deducted against subsequent years' income and capital gains until they are fully absorbed. Losses are calculated in the same manner as income. Any losses incurred outside Malta that would not have been subject to tax had they been income, are not deductible. Company trading losses may be surrendered under the group relief provisions. Capital losses may be deducted against subsequent capital gains.

CAPITAL ALLOWANCES

A taxpayer is not allowed to claim accounting depreciation as a deduction but may claim the statutory capital allowances on fixed assets used in the production of income. The assets that qualify for capital allowances are:

- Plant and machinery, including machinery, equipment, fixtures, motor vehicles and similar fixed assets
- Industrial buildings and structures, including hotel buildings but excluding the cost of land.

Capital allowances are allowed in full for the year of acquisition and no allowances are allowed for the year of disposal. When an asset that qualified for capital allowances is sold, transferred, destroyed, or otherwise put out of use, a balancing statement is to be prepared to show the tax written down value which may result in either a balancing charge or allowance.

Capital allowances may only be deducted from income derived from the activity in which the respective assets are used. When there is a tax loss or insufficient tax profits to absorb the capital allowances for the year, the unabsorbed amount is not added to the trading losses but is carried forward separately until it is fully absorbed against the same source of income. If the related source of income is discontinued before the carried forward allowances have been fully absorbed, the balance is lost.

CAPITAL GAINS ON IMMOVABLE PROPERTY

Transfers of immovable property are subject to a Final Withholding Tax. The default tax rate on such transfers is 8% on the value of the property transfer. Other final tax rates are applicable according to particular circumstances which include transfers *causa mortis*, transfers forming part of a project, transfer made by individuals, and transfers within designated areas. The final tax rates vary between 2% and 12%.

The taxable gain on a transfer of securities is the excess of the transfer price over the cost of acquisition, but special relief is available in the case of securities acquired before 1992.

Losses and bad debts of a capital nature are allowed as a deduction against subsequent capital gains as long as they were incurred in transactions that were subject to tax on capital gains. Losses incurred in a trade, business, profession or vocation are deductible from gains or profits from other sources, including capital gains.

TAX COMPUTATION

Tax is charged on the chargeable income, which is the total of the taxable income and capital gains after excluding exemptions and allowing for deductions. In the case of companies and other business concerns, the computation takes the form of adjustments to the accounting profits.

DOUBLE TAXATION RELIEF

Taxpayers who are resident in Malta are entitled to double taxation relief on income arising outside Malta that is included in their chargeable income. Relief is granted in the form of a credit. The foreign income is grossed up with the foreign tax and taxed at the applicable Maltese rate. The foreign tax is then deducted from the Maltese tax but the deduction cannot exceed the Maltese tax on the doubly taxed income and there are no provisions for pooling of relief or for carrying forward unutilised relief.

Double taxation relief is available under the terms of relevant tax treaties or, in the absence of a treaty, in accordance with the unilateral relief provisions of the Income Tax Act. Subject to certain conditions, companies may claim relief under the flat rate foreign tax credit method, where foreign tax is deemed to amount to 25% of the income received in Malta. Companies receiving dividends from foreign investments also qualify for relief for the underlying tax.

TAX ADMINISTRATION

The government departments responsible for the administration of the main tax laws are:

- The Inland Revenue Department, headed by the Director General Inland Revenue, for income tax and stamp duty
- The Value Added Tax Department, headed by the Director General VAT, for value added tax (VAT).

Additionally, the Customs Department, headed by the Comptroller of Customs, is responsible for customs duty and excise tax. The collection of VAT on imports is administered by the Comptroller of Customs acting on behalf of the Commissioner for VAT. The Commissioner of Inland Revenue collects social security contributions on behalf of the Director of Social Security.

INCOME TAX REGISTRATION AND DEREGISTRATION

Any person who derives income that is subject to Maltese tax is required to register with the Inland Revenue Department. Registration is a simple procedure and is affected on the basis of a minimum set of particulars of the person concerned. The registration number would normally identify the taxpayer as an individual or a company. There are certain categories of individual taxpayers, but the classification has no statutory relevance to the tax treatment of the taxpayer.

Taxpayers who no longer derive income that is subject to Maltese tax may request deregistration. The department will only cancel a registration after ascertaining that all outstanding tax returns have been filed and all tax due has been settled. Before the registration is cancelled, the taxpayer must continue filing tax returns even if they no longer have any taxable income.

TAX RETURN

Every registered taxpayer is required to file an annual income tax return. Companies whose financial year ends on the 31 December must file their return by the 30 September. Other companies must file their tax return by the end of the ninth month after their accounting date, or by the 31 March following the accounting date, whichever is the later. The tax return date for individuals and other taxpayers is the 30 June but individuals qualifying for and opting to file the 'simple declaration' in lieu of the tax return must do so by the end of April. The tax return must include a self-assessment.

THE SELF ASSESSMENT SYSTEM

Every taxpayer is obliged to make a computation of his own tax liability in his tax return. The only exception applies with respect to individuals whose income is derived from employment, a pension or investments in Malta that are subject to final withholding tax. In such cases the taxpayer has the option to file a simple declaration as the tax liability would be governed through the final settlement system or the withholding tax itself.

A taxpayer may make an adjustment to his self-assessment by means of an additional return as long as he/she has not in the meantime received a revenue assessment. If the adjustment reduces the tax liability, it must be made within five years from the end of the relative year of assessment.

The tax shown in the self-assessment, taking into account adjustments made by means of additional returns, is deemed to represent the actual tax liability of the taxpayer. The department may make arithmetical adjustments but otherwise no further procedure is required. The taxpayer will normally receive a statement showing the tax due in accordance with his own self-assessment.

FINAL TAX PAYMENTS AND TAX REFUNDS

The self-assessment shows the chargeable income, the tax on the chargeable income and the credits for tax already paid under the systems discussed above. Any tax not covered by these credits becomes payable on the tax payment date, which is the date when the self-assessment is due to be filed. If any tax results from a revenue assessment, it will be deemed to have become due on the tax payment date. If the taxpayer files an objection, the payment of the amount in dispute may be held in abeyance until the objection is finally determined, but any amount still payable at that stage will, again, be deemed to represent tax that fell due for payment on the tax payment date. Late payments are subject to interest at 1% per month or part thereof.

When the credits claimed in the self-assessment exceed the tax due on the chargeable income, the balance becomes refundable. Refunds due to individuals are payable on the 1 January of the year immediately following the relative year of assessment. Refunds due to companies and commercial partnerships become payable on the last day of the sixth month following the tax return date. If a taxpayer files the tax return late, or files an additional return after the tax return date, the payment of the refund is postponed. Late payments of refunds are subject to interest at 1% per month or part thereof. Refunds due to non-resident shareholders upon distributions by an International Trading Company or out of the Foreign Income Account of other companies are payable within 14 days from the end of the month in which they are claimed.

REVENUE ASSESSMENTS

When a taxpayer has not filed a tax return, the Commissioner may determine the tax liability on an estimated basis. The estimate will have the same effect as a self-assessment but will be automatically cancelled if the taxpayer subsequently files a tax return, including a self-assessment. If the Commissioner of Inland Revenue disagrees with a self-assessment he/she may make a revenue assessment. Revenue assessments may be raised within five years from the end of the year in which the self-assessment was filed. If the self-assessment does not contain a full disclosure of all material facts, or contains incorrect or misleading information in any material respect, an assessment may be made at any time.

PENALTIES

Late returns attract penalties and interest, depending on the lateness of the return and the tax chargeable for the year. Penalties are also imposed in the case of returns containing omissions. The penalty is 3% of the endangered tax in the case of a first omission and goes up to 6% in the case of subsequent omissions. A return that does not disclose all the income, or a self-assessment that includes a deduction or a set-off that is not due, is for this purpose deemed to contain an omission. When a self-assessment is corrected by an adjustment form before the Inland Revenue Department has issued a notice of inquiry, the penalty for the omission is charged at a reduced rate. Additionally, interest at 0.75% per month is charged on the late payment of the tax.

OBJECTIONS AND APPEALS

A taxpayer who disagrees with a revenue assessment may file a notice of objection on condition that he/she has filed the relative tax return and paid the tax that is not in dispute. The Revenue may accept the objection or come to an agreement with the taxpayer. Otherwise the Commissioner will issue a notice of refusal. At that stage, the taxpayer may appeal to the Board of Special Commissioners, which is an independent administrative tribunal. An appeal against a decision of the Board may be made to the Court of Appeal on points of law only.

PAYMENT OF THE TAX

Various provisions and rules require the payment of the tax during the year in which the income arises. The different methods are described briefly below. Any amount of tax for a year not settled under these systems becomes payable on the tax return date. Late payment of tax is subject to interest at 1% per month.

FINAL SETTLEMENT TAX

The final settlement tax system (FSS) is an elaboration and improvement on the PAYE system and requires employers to deduct tax from the wages of their employees. It also applies to the payment of a retirement pension under the Social Security Act. The tax is deducted at a rate determined by the amount of the employee's wages for the year, including the value of fringe benefits, and his/her personal status and is adjusted from month to month to take into account changes in circumstances.

A taxpayer who has no other sources of income, or whose other income is subject to a final withholding tax, will normally be entitled to file a simple declaration in lieu of the full tax return. If he/she files a full tax return, employment income will be taxed at the proper rates and the tax deducted will be credited against his/her tax liability.

Employers are also required to deduct social security contributions from wages. Deductions of tax and social security contributions made every month must be remitted to the Inland Revenue Department by the last day of the following month.

PROVISIONAL TAX

Companies and self-employed individuals must make provisional tax payments on the 30 April, the 31 August and the 20 December. The total provisional tax payable during each year or, in the case of companies during each financial year, is an amount equal to the tax chargeable according to the last self-assessment that was filed prior to the first provisional tax payment. The Commissioner of Inland Revenue has the right to increase the amount payable. The taxpayer has the right to reduce the amount but will be liable to additional tax if the reduction proves not to be justified.

20% of the total provisional tax (PT) payable is due on the first PT payment, 30% on the second PT payment and 50% on the last PT payment. Companies and self-employed persons must report their income in their tax returns and make a self-assessment. The provisional tax payments are credited against their tax liability on their total income.

DIVIDENDS

Dividends paid out of taxed profits are, as a rule, not subject to further tax. Dividends paid out of untaxed profits may be subject to a withholding tax of 15% but no tax is withheld on dividends paid to a company shareholder or to a non-resident. Dividends paid by Maltese companies need not be reported in the shareholder's tax return. However, when a shareholder reports dividends, he/she will be taxed on the amount of the distributed profits gross of any tax and will qualify for a credit for the company tax or of the withholding tax.

PAYMENTS TO NON-RESIDENTS

As stated above, and subject to the applicable conditions, non-residents qualify for exemptions from withholding or any other tax on dividends, interest, royalties, capital gains, long term insurance policies and other investment income. Saving these exemptions, payments to a non-resident of income chargeable to Maltese tax are subject to withholding tax – at 35% if the non-resident is a company and 25% in other cases.

Payments of income will not represent or will not fully represent chargeable income if the income arises outside Malta, or is not taxable in Malta under the terms of a tax treaty or on account of exemptions, or qualifies for deductions. The onus to withhold tax is on the payer. Where the payer is not in a position to determine the extent to which the income is subject to Maltese tax, if at all, he/she may request a ruling from the Commissioner of Inland Revenue and the Commissioner may authorise a nil or a reduced withholding tax rate. Tax withheld under this provision is not final. If the non-resident declares the income in a tax return, the tax withheld will be granted as a credit and any excess credit will be refundable.

FINAL WITHHOLDING TAX ON INVESTMENT INCOME

Interest on investment income payable to residents is subject to 15% withholding tax.

Investment income includes:

- Interest on local bank deposits
- Income from certain other local investments
- Capital gains on the redemption, liquidation or cancellation of shares or units in a collective investment scheme licensed in Malta
- Capital gains on the surrender or maturity of linked long term insurance policies
- Profits distributed by a foreign collective investment scheme and interest paid by foreign banks when the payment is made through an authorised intermediary in Malta.

As the withholding tax is final, no further tax is payable and individuals have the option of not reporting investment income in their tax returns. However, residents have the option to request the payment of investment income without withholding tax, in which case they will be required to report it in their tax return and will be liable to tax, if any, at the normal rates. Investment income paid to non-residents is not subject to withholding or any other tax.

FINAL WITHHOLDING TAX ON LONG-TERM INSURANCE POLICIES

Any amount payable by an insurer carrying on long-term insurance business in Malta to a policyholder resident in Malta on the maturity or surrender of the policy or in any other circumstance (other than on a death claim) is subject to withholding tax at 15%. The amount is not subject to any further tax in the hands of the policyholder. No tax is withheld on payment to non-residents or on the payment of a death claim.

PROVISIONAL TAX ON CAPITAL GAINS

If a person makes a transfer that falls within the scope of the tax on capital gains (transfers of immovable property, securities or intangible assets) he/she must pay provisional tax at the rate of 7% of the transfer price. This tax is not final. The capital gains on the transfer must be reported in the beneficiary's tax return and taxed at the normal rates. The provisional tax will then be allowed as a credit and any excess credit will be refundable. The Commissioner may authorise a reduced or nil rate of provisional tax in cases where the transfer is exempt from tax or where it is shown that provisional tax at 7% will exceed the actual tax liability.

PAYMENTS TO FOREIGN EMPLOYEES

Employers are bound to give the Commissioner of Inland Revenue details of the employment of foreign individuals. Employers are, moreover, bound to give the Commissioner a one-month's prior notice of the termination of employment of foreign individuals and may not release the final payment due to a foreign employee before the expiration of that period. Moreover, an employer may be appointed by the Commissioner as a representative taxpayer of a foreign employee and responsible for his/her tax obligations.

ANTI TAX AVOIDANCE RULES

Maltese tax legislation contains some very wide anti-avoidance measures. For income tax purposes, the tax authorities are empowered to disregard artificial and fictitious transactions and any scheme whose sole or main purpose is to avoid, reduce or postpone the tax liability that would otherwise arise. Other rules provide for more specific anti-avoidance measures.

REVENUE RULINGS

A company is entitled to request a binding ruling that a transaction to which it is a party will not be treated as an income tax avoidance scheme and the tax authorities will issue that ruling if they are satisfied that the transaction will be effected for bona fide commercial reasons. Advance binding revenue rulings may also be requested on a number of other specified matters, mainly related to international business. Income tax rulings by the Revenue are binding for a period of five years and may then be renewed for another five years. If the law on the particular subject is changed during the operation of a ruling, that ruling remains binding either until the end of the relevant five-year period or for two years following the amendment, whichever is shorter. Revenue rulings on matters not specified in the law are not legally binding.

ENFORCEMENT OF TAX CLAIMS

Tax authorities have certain privileges in legal procedures for the enforcement of claims. A request for payment of tax that is not in dispute will constitute an executive title without the need of requesting a court judgement. Claims for the payment of income tax do not enjoy any preferential ranking, but claims for the payment of income tax and social security contributions deducted from employees' wages rank equally with the wages.

TAX AUDIT

The tax authorities examine the tax returns submitted to them in varying degrees of detail. They have full powers to make further investigations after the submission of returns and to request further details, information, records, and returns. Subject to certain conditions and safeguards, they have a power of entry into a business and professional premises. The taxpayer and/or the taxpayer's representatives must also appear at the tax office to answer questions in person when asked to do so.

TAX RECORDS

Taxpayers carrying on a trade, business, profession or vocation must keep full records relevant to the determination of their taxable income, including records of all expenses, records of sales and purchases, a profit and loss account, a balance sheet, and all supporting documents. In the case of companies resident in Malta, the balance sheet and the profit and loss account must comply with the requirements of the Companies Act and must be audited. Companies may be constituted with a share capital denominated in a foreign convertible currency and must prepare accounts and pay tax in the currency of their share capital. Records must, for tax purposes, be kept for at least nine years.

TAXATION OF COMPANIES AND SHAREHOLDERS

COMPANY TAX SYSTEM

Companies are subject to income tax and tax on capital gains under the terms of the Income Tax Act and there is no separate law for corporation tax.

DEFINITION OF A COMPANY

For income tax purposes, a company means a body of persons that falls under any of the following categories:

- A limited liability company constituted in Malta
- A mixed liability partnership (*partnership en commandite*) constituted in Malta whose capital is divided into shares
- A body of persons incorporated outside Malta of a nature similar to the limited liability company or to a mixed liability partnership (*partnership en commandite*) with share capital.

Bodies of persons not covered by the definition of a company include corporations constituted by an Act of Parliament, general partnerships (*partnerships en nom collectif*), mixed liability partnerships (*partnerships en commandit*) whose capital is not divided into shares, civil partnerships and similar foreign entities.

When a foreign company sets up a branch in Malta, it is required to be registered under the Companies Act as an overseas company. The registration applies to the company and not to the branch and the branch itself is not recognised as a separate entity for company law or income tax purposes.

RATE OF TAX

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

Cooperative societies are exempt from tax.

BASIS OF TAXATION OF COMPANIES

A company incorporated in Malta is treated as domiciled and resident in Malta and is subject to tax on its worldwide income and capital gains. A company that is not incorporated in Malta is resident in Malta if its management and control are exercised in Malta. Like other taxpayers, a company that is resident but not domiciled in Malta is subject to tax on income and capital gains arising in Malta and on foreign income, but not foreign capital gains received in Malta. The test of management and control is usually applied by reference to the place where the shareholders' and directors' meetings are held and where the important decisions are taken. The fact that a foreign company has a branch in Malta does not, of itself, constitute residence. A company that is not resident in Malta is taxable on income and capital gains arising in Malta.

TAXABLE INCOME

The audited financial statements of the company will normally form the basis of the tax computation, but adjustments will be necessary in order to arrive at the company's income chargeable to tax. Adjustments would typically include the write-back of depreciation and a deduction for statutory capital allowances, the write-back of provisions and of expenses that do not satisfy the tax deduction rules, and the application of other special income tax rules, such as those relative to the determination of income from the letting of immovable property and of capital gains.

Transactions between a foreign company and a Maltese-controlled company must be made at arm's length. There are no other specific transfer pricing rules but inter-company pricing may be scrutinised under the general anti-tax avoidance powers of the Revenue.

GROUP RELIEF

Trading losses incurred by a company may be surrendered to another company or companies within the same group. Two companies are within the same group for tax purposes if:

- They are both resident in Malta and in no other jurisdiction and
- One is the subsidiary of the other or both are subsidiaries of a third company resident in Malta.

A company is treated as a subsidiary of another if it is owned and controlled, directly or indirectly, more than 50% by the other. Ownership and control are tested by reference to the ordinary share capital, voting rights, dividend rights and rights to distributions on liquidation. The surrendering and the claiming company must have financial years that begin and end on the same dates and must have been a member of the same group for the full financial year in which the losses were incurred.

Losses may be surrendered within 12 months from the end of the financial year in which they were incurred. Group relief for a particular year may only be claimed with respect to losses incurred in that year. But once the losses have been surrendered, they are treated as trading losses of the claimant company and can be set off against the income and capital gains of that company or carried forward by it indefinitely. Surrendered losses cannot be surrendered again to another company. Capital losses do not qualify for group relief.

CORPORATIONS AND SHAREHOLDERS

'Dividends' include any distribution made by a company to its shareholders and any amount credited to them in their capacity as shareholders. They also include bonus shares representing a capitalisation of profits. Distributions to shareholders in the course of winding up a company are deemed to be dividends paid, to the extent that the distribution is made out of income of the company.

TAX ACCOUNTS

The taxation of dividends depends on the account out of which the distribution is made. Companies resident in Malta are required for tax purposes to allocate their distributable profits to different tax accounts according to the nature of the income.

THE TAX TREATMENT OF DIVIDENDS

Distributions out of the foreign income account and out of the Maltese taxed account do not attract any further tax. The only exception applies in the case of distributions of old profits that had been taxed at the rate of 32.5%, which applied before 1991. In such cases the company is required to withhold tax at 2.5% but no tax is withheld on distributions to non-resident shareholders.

Distributions out of the untaxed account are subject to a withholding tax of 15%, but again, non-resident shareholders are exempt from this withholding tax. Distributions out of the untaxed account to a shareholder that is a company resident in Malta are not subject to withholding tax but are to be allocated to the untaxed account of the shareholder.

A shareholder who is an individual may opt to report or not to report dividends received from Maltese companies in his/her tax return. The same option is open to companies which are resident outside Malta. If the dividend is reported, it will be taxed (unless it qualifies for an exemption) together with the taxpayer's other income at the applicable rates. The taxable amount is the net dividend grossed up by the withholding tax, if any, and the company tax. The withholding tax and the company tax can then be set off against the shareholder's tax liability and any excess credit is refunded.

FULL IMPUTATION SYSTEM – REFUND MECHANISM

Malta reached an agreement with the European Commission in January 2007, which effectively preserved intact the country's competitive imputation tax system for businesses in Malta. The tax system is a general system applicable to all types of companies and to every shareholder. It is not a specific measure designed to help a specific sector. Consequently, it is a permanent agreement with the EU.

A full imputation system is applicable, which means that dividends paid by a company resident in Malta carry a tax credit equivalent to the tax paid by the company on its profits out of which the dividends are distributed.

This system applies to both resident and non-resident shareholders. Resident shareholders are taxed on the gross dividend at the applicable tax rates, but are entitled to deduct the tax credit attached to the dividend against their total income tax liability. Individual shareholders of companies are entitled to tax refunds when their marginal tax on the dividend is less than the tax paid by the distributing company.

Under this refund system, Advanced Company Income Tax (ACIT) will be payable upon distributions by all companies of profits which are not derived from immovable property situated in Malta. The ACIT paid will be offset by the distributing company against its company income tax. Once ACIT has been paid by the distributing company, shareholders (whether resident in Malta or not) may claim tax refunds as described below.

The ACIT is levied at the level of the distributing company and at the rate of 35% upon any distribution; the shareholder will be entitled to a refund of a part or whole of that ACIT. This refund will be reduced where the distributing company would have claimed double taxation relief. The amount of the tax refund is set at 6/7ths of the tax paid by the company (5/7ths in the case of passive interest and royalties) and the full refund with respect to participating holdings will be retained. The resident shareholder is taxable for the total amount of net dividend and refund received. A non-resident shareholder is not taxed in Malta.

THE FLAT RATE FOREIGN TAX CREDIT

Companies are entitled to a tax credit for any tax that has been paid abroad, including relief for underlying tax. However, with respect to income allocated to the foreign income account, companies may claim relief under the Flat Rate Foreign Tax Credit method (FRFTC). Under the FRFTC, foreign income is deemed to have suffered foreign tax equivalent to 25% of the income received in Malta and does not require evidence of the foreign tax actually having been paid. Income allocated to the foreign income account is for this purpose grossed up by 25% and taxed at 35%. The deemed tax (20% of the grossed-up amount) is then given as a credit against the company's tax liability. The grossing up is made before any deductions from the foreign income to which the company may be entitled. The credit is limited to 85% of the total tax payable by the company on the income allocated to its foreign income account, before the FRFTC itself but after any other double taxation relief that the company may have claimed.

SUBSIDIARIES/BRANCHES

A subsidiary incorporated in Malta is taxed on its worldwide income. But if the subsidiary's activities are limited to Maltese business, its worldwide income will be equivalent to the income that the parent would have derived through a branch. The taxable amount and the tax burden of a subsidiary are therefore normally equal to that of a branch.

A branch could provide certain advantages since its losses would normally be offset against the company's foreign taxable profits for foreign tax purposes, whereas the losses of a subsidiary might not be available for offsetting. On the other hand, the rules for the carrying forward of trading losses from year to year under Maltese tax law are clearer for a subsidiary than they are for a branch. The procedures for setting up a branch are simpler and the costs are lower but the differences are marginal. Dividends and interest paid by a subsidiary to its foreign parent company are not subject to any further tax, and the foreign company will be similarly exempt from tax on any capital gains derived from the disposal of the subsidiary (unless the subsidiary owns immovable property in Malta). When the company's structure requires a Maltese tax residence, for example on account of treaty considerations, this is best obtained through the formation of a subsidiary.

SHIPPING AND AIR TRANSPORT

Companies incorporated in Malta and owning Maltese ships qualify for incentives under the Merchant Shipping Act. Subject to the condition of reciprocity, non-resident ship-owners are exempt from Maltese tax. Profits of non-residents from the casual calls of ships in Malta are also exempt. The same rules apply to profits derived by non-residents from the business of air transport.

Shipping and air transport profits of non-resident companies are usually exempt from Maltese tax also on account of the provisions of the relative double taxation treaties. In the exceptional cases where a non-resident is subject to Maltese tax, the taxable income will be restricted to profits attributable to goods and passengers shipped in Malta. It is possible to agree with the Revenue on an apportionment-based method of taxation.

PARTNERSHIPS AND OTHER ENTITIES

PARTNERSHIPS

A partnership that does not fall within the meaning of a 'company' as defined in the Income Tax Act is not recognised as a separate taxpayer for income tax purposes, even though it might have a distinct legal personality for company law purposes. As a rule, the partnership will need to be registered for income tax purposes and the partners are required to keep partnership accounts and file a partnership tax return. Partnership income (or loss) is computed in accordance with the normal rules, but it is then deemed to be the income of the partners according to their respective shares.

Tax is not levied on the partnership, as such, but directly on the partners at the rates applicable to them respectively, which may depend on their residence and other circumstances. A loss incurred by the partnership is similarly treated as a loss incurred by the partners and may therefore be offset against their other income and carried forward by them, subject to the rules applicable to losses. This treatment applies to:

- Partnerships constituted under Maltese law as a general partnership (*partnership en nom collectif*) or as a mixed liability partnership (*partnership en commandite*) whose capital is not divided into shares
- Civil partnerships
- Similar foreign partnerships
- Joint ventures and irregular partnerships.

The rules outlined above apply to joint ventures and irregular partnerships, except where there is usually no obligation to register the body of persons with the Inland Revenue Department and to file a partnership return.

ANTI-AVOIDANCE RULE

The Commissioner of Inland Revenue has the right to disregard a partnership if he is of the opinion that it was formed for the purpose of fragmenting income and that the partners do not in fact jointly carry out a trade, business, profession or vocation. In such cases, the Commissioner will decide the manner in which the tax liability on the profits is to be borne.

TRUSTS

A trust is not recognised as a person under Maltese civil or tax law and the income derived by the trustees is taxable as income of the beneficiaries. Trustees have, like all other persons having the management or administration of income belonging to other persons, the obligation to report the taxable income and pay the tax. If the income is subsequently reported by the beneficiaries or otherwise taxed in their hands, any tax paid by the trustees on the respective shares will be available as a credit.

The income of a trust registered with the Malta Financial Services Centre qualifies for a special tax treatment.

ESTATES

Under Maltese law, the assets of a deceased person devolve immediately and automatically to the heirs. An estate is not a taxpayer but if an estate is administered by an executor and the heirs or their shares are not readily identifiable, the executor is responsible for reporting the income of the estate and paying the tax on behalf of the heirs. If the heirs subsequently report the income or are otherwise taxed on it, the tax paid by the executor is credited to them.

FOUNDATIONS

A foundation may be set up by a public deed and may be constituted as an entity with legal personality. The Income Tax Act places a responsibility on administrators to report the income of the foundation and to pay the tax.

THE TAX SYSTEM APPLICABLE TO INDIVIDUALS

INDIVIDUALS SUBJECT TO TAX

Individuals include minors. Saving certain exceptions, income of minors is treated under Maltese law as income of the parents vested with parental authority and must accordingly be reported together with their other income. Income of minors that is excluded from the parental authority is taxed separately from the income of the parents. However, the responsibility for the relative tax obligations falls on the parents or, in their absence, on the tutor of the minor. Under an anti-tax avoidance rule designed to avoid the fragmentation of income, income derived by children as a result of the disposition of a parent may be treated as the income of the parent.

The income of a married couple living together is treated as the income of one taxpayer. In appropriate circumstances, however, the tax on the spouses' income may be calculated as if it were the income of two separate individuals, as explained below.

Heirs are jointly and severally liable for the tax on the income of a deceased person. Under Maltese law, the estate of a deceased person passes automatically to heirs immediately upon death. The income of the estate is therefore the income of the respective heirs. However, if the heirs or their shares are not yet determined, the income of the estate may be taxed provisionally in the hands of the executor.

RATES OF TAX

Individuals are, as a rule, subject to tax at progressive rates. There are different scales of rates for different categories of individuals. The maximum rate is 35%.

BASIS OF TAXATION OF INDIVIDUALS

An individual is subject to tax on his/her worldwide income (including capital gains) if he/she is ordinarily resident and domiciled in Malta. If he/she is resident, but not ordinarily resident and domiciled in Malta, he/she is subject to tax on income and capital gains arising in Malta, as well as on foreign income (but not capital gains) received in Malta. Non-residents are subject to tax on income and capital gains arising in Malta.

An individual is held to be resident in Malta in a particular calendar year if:

- He/she is in Malta for a period of more than six months in any calendar year, or
- Is present in Malta with the intention of establishing a residence there.

A person is ordinarily resident in Malta if he/she is regularly resident over a number of years. An ordinary resident ceases to be resident in Malta if he/she is absent from Malta in circumstances that, in the opinion of the Commissioner of Inland Revenue, are incompatible with the status of resident. The indications that would be taken into account for this purpose are the duration of the absence and the connections that the individual may have retained with Malta.

‘Domicile’ is a term of private international law. An individual usually acquires the domicile of his/her parents on their birth but may acquire a domicile of choice in another country if he/she is present in that country with the intention of remaining there permanently.

Individuals are taxed for every year of assessment on income derived during the preceding calendar year.

TAXABLE INCOME

Taxable capital gains must be reported together with the taxable income and tax is levied on the total amount. Individuals may qualify for certain exemptions, including an exemption from tax on capital gains derived from the sale of property that had been owned and used as the taxpayer’s sole ordinary residence for at least three years.

Employment income includes the value of any fringe benefits, determined in accordance with the Fringe Benefits Rules. Any perk paid by an employer or a related company to an employee or to a member of his/her family is deemed to constitute a fringe benefit. The use of a company car or a car allowance, the use of company property, the provision of free or subsidised board and lodging and free non-business travel, are among the fringe benefits specifically regulated by the rules. Share options become taxable when the option is exercised. A number of specified benefits are exempt under certain conditions, such as health insurance and the use of a computer and related equipment. Employment income is subject to deduction at source under the Final Settlement System.

Income derived by individuals from other sources is, in general, determined in accordance with the rules, and qualifies for the deductions applicable to other taxpayers.

Individuals are not required to report dividends received from companies resident in Malta. If they opt to report dividends, they will be taxed (as in the case of other taxpayers) on the dividend gross of company tax and the company tax will be allowed as a credit against their personal tax liability, with a right to a refund for excess credit.

Individuals have the option to receive investment income without withholding tax, in which case they will be required to report the income in their tax returns, where it will be taxed at their personal rates. Investment income that has been subject to withholding tax need not be reported. If it is, it will not be subject to further tax and the tax withheld will not be available as a credit.

Individuals may qualify for a deduction in respect of alimony paid to an estranged spouse and also for private school fees. There are no personal allowances, but the tax rates of resident individuals include a tax-free portion, an amount which varies according to whether the individual is taxed as a married or as a single person.

MARRIED COUPLES

The income of a married couple living together is treated as the income of one taxpayer. But for the purpose of calculating the tax payable, they may opt for a separate computation. In a separate computation, the earned income of each spouse is taxed as if it were derived by a single person. The unearned income of both spouses is treated as the income of the spouse with the higher amount of earned income. The income of each spouse qualifies for the tax free portion applicable to single taxpayers and is taxed at the single persons' rates. However, spouses are still required to have one tax registration and to file one tax return. It is up to the married couple to decide who is the responsible spouse for tax purposes, and who, accordingly, has the responsibility for reporting and paying the tax.

PARENTS

Different tax bands are applicable to parents. These tax bands which came into effect on 1 January 2012, and apply to parents who maintained under their custody a child, or paid maintenance in respect of their child as determined: a) by the Courts of Malta or the Courts of another country; b) by a public deed of personal separation under the authority of the Courts of Malta or the Courts of another country, or c) by the Courts of Malta in a divorce judgment or a decree or by the Courts or other authorities of another country. The Parent Tax Rates apply only where such child was not over 18 years of age (or below the age of 24 years if receiving full-time instruction at a tertiary education establishment) and not gainfully occupied, or if gainfully occupied did not earn income in excess of €2,400.

RESIDENCE PERMIT HOLDERS

Foreigners (ie non-Maltese citizens) are able to buy immovable property in Malta. However, citizens from a non-EU country require a permit.

EU citizens (including Maltese citizens) who have not resided in Malta for at least five years wishing to buy a holiday home (secondary residence) require a permit (Acquisition of Immovable Property Permit – AIP) from the Inland Revenue Department. This permit is usually granted within six or seven weeks.

A permit is not required:

- If an EU citizen declares on the contract of purchase that he/she intends to purchase the immovable property as a primary residence i.e. to become a permanent resident
- If any foreigner (even non-EU ones) purchase immovable property in a special designated area
- If an EU citizen has been a resident of Malta for more than five years

- EU citizens may only buy one property unless they have been resident for at least five years, or they buy in a special designated area, and the second property is required for the person's business activity or supplying of services.

EU citizens resident in Malta for a continuous period of five years may purchase another property without the necessity of a permit. Non-EU citizens are not allowed to purchase more than one immovable property except in special designated areas.

Any foreigner may buy three immovable properties in special designated areas and one outside special designated areas.

Immovable property may be purchased in the name of a company if the property is in a special designated area, and as long as persons who are citizens of the EU and who have resided in Malta continuously for five years hold 75% of the share capital. The company must operate in an EU country and all directors have a five-years residence qualifier.

In other cases, a permit will only be granted if the property is required for an industrial or tourist project or will contribute to the development of the economy of Malta.

The conditions in the AIP permit are:

- The minimum value of the immovable property has to be at least EUR 99,000 for apartments/maisonettes and EUR 165,024 for houses
- The property has to be used solely as a residence for the applicant and his/her family.

A foreigner may buy below the threshold of EUR 99,000 and EUR 165,024 if the immovable property is a shell, unfinished or unconverted. The purchaser must produce an architect's certificate showing that the property requires additional work to be done to it, which brings it to the level of the threshold to make it habitable.

RESIDENCY

Anyone can take up residence in Malta.

To take up residency in Malta, an individual must declare his/her desire to do so within three months of arrival by completing and submitting a form (EU or non-EU) to the Immigration Division at the police headquarters and to a designated Government agency called Identity Malta.

There are different forms under which one might apply for Residency including the Global Residence Scheme, The Malta Residence Programme for EU Nationals which replaces a successful scheme called the High Net Worth Individuals Rules. The tax benefit here consists mainly of the right given to pay a flat rate of 15% tax on all foreign source income remitted to Malta.

MALTA INDIVIDUAL INVESTOR PROGRAMME (IIP)

Until recently, under Maltese law, there were three ways to acquire Malta citizenship and Maltese passports. In 2013, a fourth option was introduced by the Government of Malta called the 'Individual Investor Programme of the Republic of Malta (IIP Malta). This Malta Investor Programme Malta scheme grants citizenship to Malta to foreign individuals and families, who contribute to the economic development of Malta by means of an Investment programme.

FOREIGN EMPLOYEES

Individuals who are not citizens of Malta may be employed in Malta if the employee is in possession of a work permit. As they will not be domiciled in Malta, they will be taxed on income arising in Malta, which will include their employment income and any foreign income (but not capital gains) received in Malta. Their Maltese income will include all remuneration for services performed in Malta, including the value of free accommodation and any other fringe benefits.

There are no special tax rates for foreign employees. If they satisfy the residence test, they will be taxed at the rates applicable to other residents (including the tax-free portion). Otherwise, they will be taxed at non-residents' rates. The taxation of individuals working in Malta may be subject to the provisions of any applicable treaty.

INDIVIDUALS EMPLOYED OUTSIDE MALTA

Individuals who are subject to tax on their world-wide income may qualify for special tax rates on income derived from foreign employment. These rates apply if the relative contract of employment requires the performance of duties wholly or mainly outside Malta.

INDIRECT TAXES IN MALTA

VAT is charged on supplies of goods and services in Malta and on the importation of goods into Malta. Imports from outside the EU are also subject to import duty, though no duty is charged on the importation of goods of EU-origin.

Excise duty is charged on excise goods produced in or imported into Malta.

Other indirect taxes levied include:

- A protective levy on a limited number of goods imported for use and consumption in Malta
- A duty on documents and transfers (stamp duty) on a number of transfers and transactions
- A motor vehicle registration tax on the registration of every motor vehicle imported into Malta
- The inheritance of immovable property situated in Malta and of securities in Maltese companies is subject to stamp duty, but otherwise there is no succession or estate tax.

There are no local taxes of any kind.

VALUE ADDED TAX (VAT) – BACKGROUND

VAT was introduced into Malta in 1994, replaced by a customs and excise tax in 1997 and re-introduced with effect from 1 January 1999. The Maltese VAT system is based to a large extent on the EU VAT regime.

VAT is imposed on every importation of goods into Malta and on every supply of goods and services in Malta in the course of business.

VAT is charged at a standard rate of 18%, but a reduced rate of 7% is charged in respect of accommodation in hotels and holiday premises, and 5% on electricity and certain appliances to be used for alternative sources of energy.

VAT ON IMPORTS

VAT is imposed on goods imported into Malta (as opposed to Intra Community Acquisition) at a rate of 18% of the taxable value of the goods. It is collected by the Comptroller of Customs at the time of the release of the goods together with any duties payable on the imports.

A number of importations are exempt from VAT. Intra-community acquisitions are not subject to VAT on imports but are treated as intra-community acquisitions. The major difference is that the liability to pay the VAT does not arise at the time of the release of the goods, but will be accounted for at a later stage, when at the same time the importer can claim the corresponding input tax credit.

VAT ON GOODS AND SERVICES

VAT is charged on the taxable value of goods and services supplied in Malta. A supply of goods is deemed to take place in Malta if the goods are situated in Malta at the time of the supply. In the case of supplies of services, the general rule is that a service is treated as taking place in Malta if the supplier is established in Malta.

Certain services are regulated by special rules – for example, intellectual services and banking and professional services. The taxable value is usually the price charged for the supply.

VAT charged on goods and services (output VAT) becomes due at the time when the supply takes place and must be paid by the supplier to the Commissioner of VAT at the time when furnishing his VAT return. VAT on imports (outside the EU) falls due at the time when the imports take place and is payable to the Comptroller of Customs on behalf of the Commissioner of VAT before the imported goods are released from customs bond.

REGISTRATION FOR VAT

The effects of registration are basically the obligation to account for and pay VAT and the right to claim input VAT credits. A person is required to register for VAT within 30 days from the date when he/she makes a taxable supply. A valid registration must also be in hand in order for a business to transact within the EU. Persons established outside Malta may apply for registration even if they do not have taxable supplies, but registration in such cases depends on the discretion of the VAT authorities.

VAT TAX PERIODS, RETURNS

The tax period for VAT is typically three months. Exempt persons and taxable small businesses qualify for a 12-month tax period. Exporters and other businesses that are regularly entitled to VAT refunds may qualify for one-month tax periods. Registered persons must furnish a tax return for each tax period and except for exempt persons, must pay the relevant output VAT, if any, due for that tax period. The tax return and the tax payment fall due within six weeks after the end of the relative tax period.

VAT INVOICES AND RECORDS

Supplies made in the course of business must be backed by a VAT invoice – the tax invoice is the basic VAT document since it is the basis on which the purchaser may claim an input tax credit and provides the VAT authorities with an audit trail.

Registered persons are also required to keep a VAT account that must indicate the total input tax and total output tax for each tax period, together with a cross reference to the accounting entries for the transactions on which the tax had been charged.

VAT ADMINISTRATION

The Administration of VAT is vested in the Commissioner of VAT. Powers and duties include furnishing information to the Commissioner of Inland Revenue and the Comptroller of Customs, access to property, and inspection of records and documents. The Commissioner is empowered to carry out inspections on businesses to raise assessments and to impose administrative penalties. Taxpayers may appeal against assessments to the Board of Appeals and appeal decisions of the Board, on points of law, to the Court of Appeal.

IMPORT DUTY

Imported goods of EU origin are not subject to import duty. Imports from non-EU countries are subject to import duty at rates of not less than 8.1%. Import duties are administered by the Comptroller of Customs. The law provides for a number of exemptions, including exemptions on temporary importations.

EXCISE DUTY

Excise duty is levied on excise goods produced in or imported into Malta. Excise goods fall under three headings – manufactured tobacco, mineral oils and alcohol. Excise duty is administered by the Comptroller of Customs.

PROTECTIVE LEVIES

Levies imposed under the Local Manufactures (Promotion) Act are being phased out and are, at the moment, restricted to certain agricultural products.

MOTOR VEHICLE REGISTRATION TAX

Motor vehicles are taxed upon their first registration in Malta. The rates vary with the value, the category of vehicle and engine capacity.

DUTY ON DOCUMENTS AND TRANSFERS (STAMP DUTY)

A duty is levied on documents relating to transfers of property and shares, insurance policies and auction sales.

A number of limitations and exemptions apply, including an exemption from duty on transfers of immovable property between companies forming part of the same group and a reduced rate of duty on the acquisition of property to be used as one's ordinary residence.

WEALTH AND CAPITAL TAXES

No taxes are levied on net wealth as such. In the case of corporations, no tax is levied on the basis of the capital of the business, but an annual registration fee, which may reach a maximum of EUR 1,335 is charged by reference to the nominal share capital.

LOCAL TAXES

There are no local taxes of any kind.

LICENSING FEES

Annual licensing fees are imposed on a wide variety of activities, such as trading licences, the road licence and licences to keep firearms.

TAX TREATIES

TAX TREATY POLICY

Since the mid-seventies, Malta has sought to expand its treaty network. Malta's treaties are based on the OECD model. However, the older treaties contain variations designed to attract direct investment in Malta from the major industrialised countries.

They are characterised by certain special tax incentives for foreign enterprises setting up manufacturing establishments in Malta. These consist typically in low tax rates on dividends arising in Malta supported by tax sparing provisions.

Malta's economic development, and particularly the growth in its financial services sector, expanded the scope for tax treaties and the number of treaty partners has more than doubled in the last ten years. The current list of tax treaties can be found here:

<http://www.mfsa.com.mt/pages/viewcontent.aspx?id=196>

A tax treaty concluded by Malta becomes law by Ministerial order and it applies notwithstanding any provisions to the contrary under Maltese domestic tax law. However, under the rule that treaties do not impose a tax liability, non-residents qualify for certain benefits under Maltese domestic law, particularly exemptions from withholding taxes that are more favourable than the respective treaty rules.

WITHHOLDING TAXES

The typical treaty rate on dividends paid by Maltese companies is the company rate of tax, which stands at 35%. This rate is however charged under Malta's full imputation system, which means that the shareholder qualifies for a credit in respect of the tax paid by the company. Company profits are therefore taxed only once and no further tax is effectively payable by the shareholder on distributions. Maltese law expressly provides for the fact that no tax is to be withheld on dividends paid to non-residents.

Certain treaties entitle non-resident shareholders to a 15% rate on dividends paid by Maltese companies that qualify for benefits under industrial incentive legislation. This means that if the company has paid Maltese tax on the distributed profits at a rate exceeding 15%, the credit to the shareholder under the full imputation system would result in a refund. The treaty would usually protect this benefit by tax sparing provisions. However, the tax levied on the companies under the Income Tax Act in such situations will be directly limited to 15%, as if the treaty rate applied to the company profits. Rather than a refund on the payment of dividends, investors will therefore qualify for the reduced rate at the company level at the time that the profits are derived and without any obligation to distribute the profits.

Maltese domestic law also provides for no tax to be payable by non-residents on interest and royalties arising in Malta, subject to certain conditions and this rule overrides the treaty provision on withholding taxes on these categories of income. Similarly, no tax is payable by non-residents on capital gains arising outside Malta, except where they are derived from the transfer of immovable property or from shares in companies owning immovable property.

ELIMINATION OF DOUBLE TAXATION

Treaty relief is one of the forms of double taxation relief available to Maltese residents and is granted under the ordinary credit method. Companies resident in Malta that derive dividends from foreign companies can, in addition to relief for the tax on the dividends, claim relief for underlying tax even if such relief is not provided for in the treaty.

Companies resident in Malta may, subject to certain conditions, claim double taxation relief under the flat rate foreign tax credit method in lieu of treaty relief. This can prove particularly beneficial when the foreign income has been exempt from tax or taxed at a reduced rate in terms of the applicable treaty.

The following countries have so far ratified double taxation treaties with Malta: Albania, Australia, Austria, Barbados, Belgium, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, France, Germany, Hungary, Iceland, India, Italy, Korea, Kuwait, Latvia, Lebanon, Libya, Libya, Lithuania, Luxembourg, Malaysia, Netherlands, Norway, Pakistan, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Syria, Tunisia, the United Kingdom and the United States of America.

7 – ACCOUNTING & REPORTING

Companies in Malta must keep proper accounting records and prepare financial statements which give a true and fair view of the company's results and affairs.

In doing so, directors are required to apply international standards. Companies must file an annual return together with financial statements with the Registrar of Companies. The financial statements may be submitted in abridged form, but in particular cases the full financial statements are required.

ACCOUNTING REQUIREMENTS IN MALTA

Accounting requirements in Malta are in line with the EU Fourth and Seventh Directives.

The Companies Act makes compliance with International Financial Reporting Standards mandatory and the following rules apply:

- A company with subsidiaries must submit group accounts
- Companies are required to appoint independent auditors to hold office from each annual general meeting to the next
- Auditors are required to make a report on the financial statements to the shareholders at the annual general meeting
- The Companies Act also requires that the report of the auditor should be drawn up in accordance with the International Standards on Auditing of the International Federation of Accountants.

ACCOUNTANCY PROFESSION

The accountancy profession in Malta is regulated by the Accountancy Profession Act.

All accountants and auditors require a warrant to practice, which is issued by the Minister of Finance upon the recommendation of the Accountancy Board, the body responsible for regulating all aspects of the accountancy profession

The Accountancy Board is appointed by the Minister of Finance. The Board regulates all aspects of the profession, including advising the government on professional matters. The Code of Ethics drawn up by the Board is modelled on the code recommended by the International Federation of Accountants.

In terms of the Act, accountants and auditors can qualify to obtain a warrant to function as such only after following one or more of the following professional courses:

- The accountancy degree course at the University of Malta
- The completion of the professional accountancy examinations set by the Malta Institute of Accountants
- Holders of foreign accountancy qualifications are also generally accepted on the condition that they successfully sit for the Malta Institute of Accountants examinations in Maltese laws and taxation.
- Other qualifications approved by the Accountancy Board.

The statutory requirements on the contents of financial statements and notes can be found in the Companies Act 1995 and the attached Schedules in the same Act.

8 – UHY REPRESENTATION IN MALTA

CONTACT DETAILS

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Total staff: 15

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BRIEF DESCRIPTION OF FIRM

The firm focuses particularly on small and medium entities which are seeking professional business and financial advice.

The firm also services a range of international clients who have set up operations in Malta in order to benefit from Malta's favourable fiscal legislation. These clients are also attracted by the high reputation that the island has gained as a reputable financial centre.

The company's strength is its flexibility, particularly attributable to the size of the company and to its young and dedicated team. UHY Business Advisory Services Limited has been appointed by HSBC (Malta) plc as recommended business advisors for start-up business. The company has also been appointed as business advisors with APS Bank Limited, a local Maltese bank, with particular emphasis on agriculture and social banking.

UHY Pace, Galea Musù & Co. is the audit arm. The firm has been operative for sixteen years through close collaboration between the two partners and it was officially registered as an audit firm with the Accountancy Board in 2004. UHY Pace, Galea Musù & Co. provides statutory company audits, specialised audits and investigation assignments on private engagement and by government entities such as the VAT Department and the Justice Department.

UHY Business Advisory Services Limited has an associated company which actively seeks to promote and assist business in the Mediterranean and North Africa.

SERVICE AREAS

Accounting and reporting
Management advisory services
Payroll services
Mergers acquisitions and disposals
Tax issues and planning
Due diligence work
Business and project finance
Investigations



The network
for doing
business

PRINCIPAL OPERATING SECTORS

Industrial Products

LANGUAGES

English, Italian, French.

CURRENT PRINCIPAL CLIENTS

Confidentiality precludes disclosure of clients in this document.

OTHER COUNTRIES IN UHY CURRENTLY WORKING WITH, OR HAVE WORKED WITH IN THE PAST

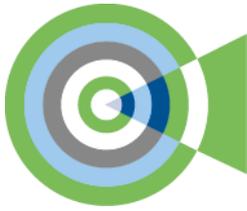
Canada, Czech Republic, Germany, Hungary, Luxembourg, Spain, UK, USA

BRIEF HISTORY OF FIRM

The firm goes back 21 years when the current partners left Deloitte & Touche (previously know as Touche Ross) to set up their respective private practices. Both offices were at the same addresses, resources were shared and following a number of years of collaboration, an official partnership was formed in the name of Pace, Galea Musù & Co. The firm joined UHY in 2001 and in 2006 the firm was renamed UHY Pace, Galea Musu` & Co.

The firm continues to embrace the professional diligence and disciplines the partners were trained in at Deloitte. UHY Malta has earned itself a prestigious reputation of quality with local institutions – particularly banks, taxation authorities, law courts and, of course, our clients.





LET US HELP YOU ACHIEVE FURTHER BUSINESS SUCCESS

To find out how UHY can assist your business, contact any of our member firms. You can visit us online at www.uhy.com to find contact details for all of our offices, or email us at info@uhy.com for further information.

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