



Doing business in Malta

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Foreword

Established by Brian Tonna, Nexia BT is a corporate and private client advisory, audit, accounting and tax firm providing a full range of financial and business advisory services to a diversified client base, with offices centrally located in San Gwann. Today, Nexia BT is one of the leading mid-tier audit firms in Malta and has been, since 2007, a member of Nexia International. The firm's client base includes blue chip companies, both local and international, financial and other institutions, public sector as well as high-end private-sector organisations and high-net-worth individuals.

Nexia BT's strength lies in its technically competent and professional staff with extensive experience across a vast array of specialised industry sectors and niche markets. The firm's mission is to deliver solutions to its clients through a high calibre customised service reflected in the professional work approach and ethics of its staff and driven by its ethos 'closer to you'.

Working closely with its customers, Nexia BT's specialists create innovative bespoke solutions that meet their clients' needs through the design of medium to long-term plans that sustain business development and growth. Nexia BT people seek to equip businesses with the tools and information to underpin sound investment decisions and provide the edge to compete in fast-paced dynamic markets where being innovative and market resilient.

As the leading Malta government approved citizenship and residency agent, the firm offers first class services to foreign individuals wishing to relocate to Malta or who would like to take advantage of the benefits available through Malta's citizenship and residency programmes such as 'The Malta Individual Investor Programme, (IIP)', the 'Residence and Visa Programme' or the 'Global Residence Programme'.

The firm's professional staff can assist with all local requirements acting as a one-stop shop providing, reducing timeframes for projects and allowing peace of mind to the client. Nexia BT is also equipped with professionals who possess considerable knowledge and experience related to international financial reporting, strategic, organisational and operational set-ups. The current workforce consists of over a hundred and thirty highly trained professional, motivated, internationally qualified and multi-lingual people, including the four partners.

Nexia International

Nexia BT is a member of the “Nexia International” network (Nexia).

Nexia is a leading, global network of independent accounting and consulting firms.

When you choose a Nexia firm, you get a more responsive, more personal, service, across the world. Nexia is a highly active network that drives quality and facilitates collaboration to enable its member firms to provide effective local and global solutions. Nexia member firms deliver a partner-led service to clients, which ensures continuity, expertise and a deep understanding of the client’s business. They are characterised by people who have an entrepreneurial spirit and who can relate closely to the SME and owner-managed businesses.

Nexia firms focus on supporting local businesses as they grow and through the Nexia network, they help their clients to confidently venture into new international markets.

Nexia International Limited, a company registered in the Isle of Man, which operates the Nexia International network, does not deliver services in its own name or otherwise. Nexia International Limited and the member firms of the Nexia International network (including those members, which trade under a name, which includes the word NEXIA) are not part of a worldwide partnership. Nexia International Limited does not accept any responsibility for the commission of any act, or omission to act by, or the liabilities of, any of its members. Each member firm within the Nexia International network is a separate legal entity.

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References to Nexia or Nexia International are to Nexia International Limited or to the “Nexia International” network of firms, as the context may dictate.

For more information, visit www.nexia.com.

Key personnel including managing partner and partners

Brian Tonna, managing partner, audit and corporate services



- Vast experience in presentations and public speaking
- Strong leadership skills and company's mentor
- Technical competence: audit, accountancy, management and finance consultancy
- Skills: business strategy and planning
- Organisational management skills

Manuel Castagna, partner, audit



- Audit and human resources partner
- Compliance principal responsible for the firm's quality assurance and risk management
- Technical competence: 20 years in public practice in audit and assurance
- Skills: audit and assurance, consolidations, quality control and management consultancy



Karl Cini, partner, tax and international client services

- Vast experience in public speaking
- Technical competence: tax and corporate services, audit and management consultancy, holding and trading structures, aviation, yachting, residence and citizenship
- Skills: business development and management skills, financial and tax advisory

Anita Aloisio, partner, specialist advisory services



- Strong negotiation and project management skills, Technical competence: cost modelling, project management, development and implementation of strategic management systems, investment and business planning
- Skills: team management and mentoring with excellent communication skills

Chapter 1 Introducing Malta

Geography and climate

Located in the Mediterranean Sea, the Maltese archipelago consists of three main islands: Malta, Gozo and Comino, with a total land mass of just 316km².

The distance between Malta and the nearest point in Sicily is 93km, while the distance from the nearest point on the North African mainland (Tunisia) is 288km. Gibraltar is 1,826km to the west and Alexandria is 1,510km to the east.

Malta's climate is typically Mediterranean, with mild rainy winters, and hot dry summers. Malta enjoys an average 300 days of sunshine per year, with a daily average of 6 hours' sunshine in mid-Winter, to more than 12 hours in summer.

Political system

Malta is a parliamentary representative democratic republic since 1974 adhering to the Rule of Law. The President of Malta is appointed by Parliament and is the constitutional Head of State holding executive authority. The Prime Minister of Malta is the Head of Government and of the Ministerial cabinet; while Parliament is vested with legislative power. This consists of the President of Malta and the unicameral House of Representatives of Malta with the Speaker as presiding officer of the legislative body. The judiciary of Malta, headed by the Chief Justice, together with the Magistrates hold judicial powers and operate through the Courts in Valletta.

The Government is elected through general elections with a mandate of five years. Malta's political stability is proven through its excellent track record whereby the since its independence in 1964, all governments have carried out their mandate for the full term, save for one episode in 1998 whereby the government was forced to call an early election.

Legal system

Maltese private law is based on a codified civil code deriving from the Napoleonic code but Malta's Commercial Laws (including maritime/admiralty, company, tax, financial services laws) and Criminal Law are heavily based on English statute and principles. Maltese Public Law makes extensive reference to English common law, which was never adopted despite Malta having been a British colony until 1964. Maltese courts are not bound by precedence.

The direct application, transposition and implementation of European Union legislation continue to invigorate Malta's legal system.

Population

The current population of the Maltese Islands is of just over 430,000 including with just over 24,000 foreigners.

Languages

Maltese and English are both official national languages and given equal status and use in governmental authorities or agencies. English is typically the language of business. Maltese, the national language, is of Semitic origin expressed in an *ad hoc* Latin script alphabet, which, over the centuries, has incorporated vocabulary derived from English, Italian and French.

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The vast majority of Maltese people are bilingual and the majority many are also conversant in Italian. Some may also have at least a working knowledge of French or German. Foreign language fluency as a percentage of the population is as follows: English 88%, Italian 66%, French 17% and German 6%.

Economy

Malta is emerging as one of the best-performing open market economies in Europe with a steady economic growth and a low unemployment rate. The Maltese economy proved resilient during the recent economic crisis and over the past four years, has registered positive performances, resulting in an increased GDP of 6.3% in 2015. The strong economic growth is stable and expected to persist throughout 2016 and 2017.

Through a broad diversification strategy, a business friendly and accessible regulatory framework, Malta's economy is growing steadily. Financial services, tourism, ICT, maritime services, health, tourism, education, aviation, science and technology, i-gaming and high-value manufacturing are among the sectors contributing to this success. While the importance of traditional sectors such as agriculture and lower-end manufacturing has diminished, new ones such as international financial services, tourism, ICT, iGaming, game development, aviation, life sciences and the manufacture of pharmaceuticals, have emerged. Malta's reputation as a safe investment location has experienced a boost, and over recent years has secured foreign direct investment (FDI) particularly in financial services, gaming, high-end manufacturing and aircraft maintenance. Malta's main commercial partner is the EU, however trade with Asia – mostly China and Singapore, the Middle East, Russia and the USA is following a positive trend.

Despite continuing global economic uncertainty, Malta's commercial features remain impressive: a stable economic environment, a well-educated workforce, a competitive fiscal regime and an attractive business climate. Sectors such as digital media and life sciences promise to develop into key economic contributors. Further growth potential also exists in niche areas such as marine sciences, educational services, health tourism and the energy sector.

Currency

Malta adopted the Euro (€) in 2008.

Business hours

Offices hours are usually between 08:00/09:00 and 17:00/18:00 from Monday to Friday, but this can vary according to the industry. Shops do not open on Sundays save for convenience and food stores. In summer, most Government offices work half days. Banks are open for business between 08:00 to 14:00 from Monday to Friday, and on Saturdays until noon.

Chapter 2 Government policies and business regulatory environment

Business regulations

The Business Promotion Act (BPA), and the Business Promotion Regulations (BPR) enacted with the aim of encouraging new business and the expansion of existing ventures, provide the main legislative backbone for tax incentives to enterprises in targeted sectors carrying out their business operations in Malta. The BPA and BPR grant generous tax credits and in certain circumstances even tax holidays to qualifying enterprises carrying out qualifying activities. Persons carrying out certain activities may also avail themselves of tax credits pursuant to legislation subsidiary to the Income Tax Act. Such benefits are available to enterprises investing and carrying out pre-defined operations including research and development, re-investment of profits and the sponsorship of employees undertaking postgraduate education in science, technology and IT.

Malta Enterprise (ME) is the national development agency responsible for promoting and facilitating international investment in the Maltese Islands by offering investors excellent business opportunities and tailored services. The ME network operates in various countries around the globe with offices or representation in Embassies and Consulates in North Africa, the Middle East, Asia, the United States and Australia. Moreover, ME is also responsible for the growth and development of Maltese enterprises both locally and beyond Malta's shores.

The incentives available under the Malta Enterprise Act may be subdivided into six categories:

- i. Access to finance - enterprises may be assisted through loan guarantees, soft loans, loan interest subsidies and, in the case of highly innovative projects, royalty financing;
- ii. Investment aid - enterprises engaged in specific activities can benefit from tax credits on capital investment and job creation;
- iii. SME development - grants targeting the creation and development of innovative start-ups and the development of forward-looking SMEs;
- iv. R&D and other innovation programmes - various incentives are offered to stimulate innovative enterprises to engage in research and development;
- v. Enterprise support - assistance and support to businesses helping them develop their international competitiveness, improving their processes and networking with other businesses; and
- vi. Employment and training - these incentives are administered by the Employment & Training Corporation (ETC). Enterprises are supported in recruiting new employees and in training their staff.

Virtually all manufacturing sectors are open to Foreign Director Investment (FDI). There are no legal prohibitions against FDI oriented towards increasing sales in Malta's domestic market. Private foreign investors are free to make equity arrangements as they wish - from joint ventures to full equity ownership.

The Malta Chamber of Commerce, Enterprise and Industry also plays a leading role in the promotion of expansion of businesses. However, unlike ME, this NGO entity attracts business people and business owners who are already established in the industry, surrounding them with a network and business opportunities through trade delegations being sent outside of Malta, or introductions to foreign investors or key persons who are interested in establishing or expanding their businesses into Malta.

Bank accounts

The Malta Financial Services Authority (MFSA) is responsible for the licensing, regulation and supervision of inter alia, credit institutions, electronic money institutions and financial institutions. Once authorised, all credit institutions are subject to the authority's continuing prudential supervision under the Banking Act and Banking Rules. The MFSA requires banks and financial institutions under its supervision to submit regular periodic returns containing information on their business.

The Banking Act also regulates the authorisation of branches and representative offices of local and foreign banks in Malta, whether with an unrestricted domestic license or with a restricted international banking license. Furthermore, the Act sets down minimum paid up capital and capital adequacy requirements on a risk weighted asset basis, these reflecting accepted international policies in this respect. All-encompassing prudential requirements have also been stipulated through the issuance of Banking Directives pursuant to the Banking Act, particularly with respect to credit institutions' application procedures, large exposures, own funds, solvency ratios and liquidity requirements.

Copyright and intellectual property (IP)

Attracting intellectual property and the development thereof to Malta has been one of the main objectives of Malta Enterprise (ME), offering a number of incentives to support enterprises throughout all stages of growth. Companies may thus benefit from various fiscal and non-fiscal incentives, which include amongst others investment aid, investment tax credits and financial assistance in the form of grants, soft loans, interest rate subsidies or loan guarantees. Furthermore, specific aid is aimed towards enterprises in the application of research and development to business operations. ME provides a comprehensive incentive package with the scope of increasing R&D activities in Malta. These are all compliant with EU State Aid rules.

Privacy

A trademark gives an identity to the business, making it a recognised brand, which is essential in today's competitive market place. Locally, successful trademark registration requires the submission of an application made to the Comptroller of Industrial Property, who, upon verification and the assertion of the originality, shall register the trademark for a period of ten years, which is subject to renewal against a fee. Applications for trademark registration may also be submitted to the Community Trademarks Office, whereby protection of the Trademark is provided for in all the EU Member States (including Malta).

Separate applications need to be filed for the same trademark under each separate class of goods and services as classified according to the International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement. This is due to multi-class applications being prohibited under the local Trademarks Act.

Nexia BT provides the service of registering trademarks locally, as well as trademarks for multi-national businesses that operate throughout the EU by obtaining a Community Trade Mark (CTM).

Mergers and monopolies

The Companies Act lays down the legal requirements and procedures for mergers. A merger must also satisfy the rules on fair competition under the Control of Concentrations Regulations and may require the prior approval of the Office for Competition.

EU Directive 2005/56/EC of October 2005 on cross-border mergers of limited liability companies has been transposed into Maltese law. This has created a legal framework within which cross-border mergers with other EU Member States may take place as long as the applicable conditions are satisfied.

Furthermore, Maltese law also implemented the EU directive on a common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (90/434/EEC as amended by 2005/19/EC), which aims to eliminate tax obstacles relating to mergers, divisions and other similar operations between companies of different Member States.

As a consequence of Malta's size, leading firms often have a virtual monopoly in certain areas of activity. The state itself maintains a monopoly in certain fields considered to require a national base in a small island like Malta, although post-EU membership, and with a sustained process of privatisation taking place, such monopolies (and Government's direct participation in industries) are diminishing.

The national competition authority is the Office for Competition within the Malta Competition and Consumer Affairs Authority (MCCAA). The Office for Competition is responsible for investigating, determining and suppressing restrictive practices and for carrying out sector enquiries.

Import and export controls

Imports are generally unrestricted. In particular, there are no difficulties concerning the importation of raw materials and equipment required by the industry. However, in terms of the Importation Control Regulations, import licenses may be required for certain products. In addition, imports from certain countries may be prohibited in accordance with restrictions set by the Security Council of the United Nations and/or by the European Union. Exports are generally free of controls, exceptions applying to items of cultural value including antiques and works of art.

Consumer protection

The Consumer Affairs Act regulates various aspects of trading in the market place. The law provides for the responsibilities of the Director General (Consumer Affairs), and establishes a Consumer Affairs Council and a Consumer Claims Tribunal. The Director General (Consumer Affairs) heads the Office for Consumer Affairs within the MCCAA. The MCCAA Act delegates to the Office for Consumer Affairs, a number of responsibilities, including the provision of advice and guidelines on consumer issues, the investigation of complaints made by consumers about goods or services provided by traders, the monitoring of trading practices and the taking of measures to suppress or prevent any practices that may be detrimental to consumers.

Another entity within the MCCAA is the Standards and Metrology Institute, which adopts standards and co-ordinates standardisation and related activities to meet the needs of the Maltese community in accordance with EU and internationally recognised standards and practices. It is also responsible for matters related to metrology.

Other departments may be responsible for better regulation of a specific sector, such as the Department of Health Information and Research, the Commerce Department and the Agriculture Department, which are actively engaged in regulating the drug and food sector where additives, ingredients, quality, hygiene, processing, labelling, and packaging are subject to stringent regulations.

Data Protection and reporting obligations

Malta's data protection rights are enshrined in the Constitution's right to privacy as well as the Data Protection Act. These rights are further enhanced and supported by applicable EU legislation. However, while the right to privacy and protection of information remains, the financial sector is bound by reporting obligations towards authorities due to the introduction of FATCA in Malta. This will further be effected by the introduction of the Common Reporting Standard (CRS) pursuant to which all EU Member States, other OECD members and other countries with whom Malta has a Memorandum, will have to share sensitive data. As an "early adopter" Malta has committed to implement the CRS in accordance with a specific and ambitious timetable leading to the first automatic information exchanges in 2017. Malta also has anti-money laundering legislation in place, obliging the financial services providers to disclose information or report any suspicion of money laundering activity. These reporting obligations are binding on every financial services provider and failure to report may lead to hefty fines, and/or a possible loss of the licence to operate.

Financial services

Malta is now an internationally recognised financial services hub. For an island the size of Malta, the country has built up a remarkably diverse financial services portfolio. Indeed, the strength of the financial services sector was a critical contributing factor to the speedy emergence of Malta's economy from the recession. In fact, the reputation of the Maltese financial services sector improved considerably due to the resilience and stability it showed during the 2008 financial crisis. This did not go unobserved in the

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global scenario and the impeccable reputation of the local financial services is expected to fuel further growth in this sector.

The financial services sector in Malta is regulated by the Malta Financial Services Authority (MFSA), a one-stop shop for all licence requirements in this sector. The MFSA regulates and licenses a broad range of service providers and seeks to provide a stable and efficient regulatory environment to grant a sound and professional experience to all operators, in order to ensure a positive experience to all clients engaging with any licensee.

Insurance

The insurance sector in Malta has developed throughout the years gaining strength in its regulatory structure, which highly reflects the UK framework and principals. In this sector, Malta offers a number of structures, which permit insurance companies to, not only be licenced for insurance purposes, but also to self-re-insure through captives and cell companies, whether incorporated or just protected. The insurance sector has also experienced an upsurge of interest due to the presence of expert insurance management services and EU and EEA passporting rights. Today Malta is one of the leading European captive insurance domiciles.

Investments

The MFSA also holds Investment Services under its administration, as regulated by the Investment Services Act, which provides the basis for regulation of investments, licencing, set-up provisions and collective investment schemes. Malta also caters for special funds, setting-up of financial markets and any ancillary services related thereto.

Banking

The country's banking sector was one of the first to embrace an international approach. More than 25 banks have established themselves in Malta – although only a handful of these are active in the local market. Despite this Malta is looking to attract other banks, particularly custodian banks.

The Banking Act contains the framework for the regulation and supervision of banks together with subsidiary licencing and compliance requirements. This legislation was enacted in 1994, and some basic principles relating to the banking activity are also enshrined in the civil and commercial codes. It is important to note that due to the nature of the businesses, the MFSA is mainly concerned with institution regulation, however, customers of the banks can report any irregularity, not limited to the irregularities in relation to the Banking Act. In turn, the MFSA will investigate the reported entity. Payment Service Providers are also regulated under this sector, in accordance with their operations and business requirements.

Corporate Service Providers (CSP)

CSPs are also regulated by the MFSA, which keeps a register of service providers and regulates the market by ensuring that CSPs are in line with all legal requirements and are in good order. The Company Service Providers Act was enacted in 2013 and lays down the requirements for registration as CSP with the MFSA, and exemptions from said registration.

Trustees/Nominee Services

Authorisation to act as trustee or fiduciary is required in order to operate as such in Malta. MFSA authorisation is given to individuals as well as corporate entities who wish to offer these services in and from Malta. Approval from MFSA must be obtained for the individuals seeking authorisation who must prove themselves "fit and proper" for the envisaged role. ..

Registry of Companies (RoC)

The RoC forms part of the MFSA and is responsible for the registration of new entities, and for the maintenance of documents and records pertaining to the registered companies/partnerships. The RoC also issues publications with notices about registered entities including accounts, ownership and representation, and any notices pertaining to non-compliance of any entity. The updating of the notices and their accessibility provides a transparent system of information, resulting in greater confidence and security to traders and others doing business with the registered entity.

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The RoC also wears an investigative hat and is responsible for carrying out investigations relating to any suspicious trade or act, which the registered entity allegedly carries out which is not in line with the principal objectives of that entity. It also monitors that no licensable activity is carried out by any non-licenced entity.

Transport

The Malta Transport Authority (Transport Malta) is the entity responsible for regulating all means of transport and infrastructure for usage thereof including registration and licencing of motor vehicles, aircraft or sea vessels.

Building on its long and varied maritime tradition, Malta has established itself as one of the leading maritime hubs and service centres in the Mediterranean. A strong legal and regulatory platform has led the Malta Flag to become a reputable international ship register. Malta ranks first in Europe and sixth on a global, having over 6,600 vessels flying its flag. The Malta flag is not seen as a flag of convenience, but rather as a symbol of prestige. With a strong emphasis on quality, with vessels over 25 years old not accepted, Malta now has one of the youngest and safest fleets in the world. Malta's maritime industry contributes almost 14% to the country's GDP.

Malta is a popular hub not only for merchant ship registration but also for pleasure yacht registration or commercial yachts availing from an optimised tax structure. The costs of setting up a company to own the yacht, when necessary, are also reasonable and contained. The advantages of reduced personal liability, and the anonymity offered by the ownership of a yacht through a company, generally attract owners to select this option. Additionally, the transfer of shares in the owning company is exempt from taxation. Furthermore, a Maltese company owning a Maltese registered yacht is not taxed on the sale and mortgage of such yacht. Maltese law imposes no restrictions on the nationality of the owner, crew, officers or captain. At Nexia BT we offer back office and registered office services at very competitive prices. Company registration and owning set-up and all related administrative matters are all services, which Nexia BT provides.

The fiscal benefits granted through vessel registration in Malta are noticeable and the same have been formulated for the aviation industry, whereby in order to further enhance Malta's reputation as an aviation jurisdiction, the Maltese VAT authorities have issued guidelines relating to VAT on aircraft leasing arrangements concerning privately operated aircraft. The Malta aviation industry is growing, not only due to the advantageous tax benefits available but also as a consequence of the highly skilled aviation engineers situated in Malta, making it an ideal aviation hub especially for private jets or entities in the private jet lease/ownership business.

Employment

Malta's employment sector is principally regulated by the Employment and Training Centre (ETC), being responsible for issuing work permits as and when they are required, generally by foreign individuals who wish to regularly reside and work in Malta. The process to obtain a work permit varies depending on whether the person a country wishes to employ is an EEA national (including Swiss, if residing in Malta) or a third country national (non-EEA citizen). As an EU Member State, Malta, and companies therein, promote the employment of EU citizens first. A duly established company in Malta must support the application and provide evidence that the vacancy has been properly advertised and that no qualified EU citizen was willing to fill the post. A recent amendment to Malta's employment regulations has also imposed limitations on branches of foreign companies in Malta to employ third country nationals.

Any litigation pertinent to employment is presided by the Industrial Relations Tribunal, which is specifically set-up to decide upon any employment related issue.

Property and presence in Malta

Malta's booming real estate market can be attributed to healthy inward investment. With an ever increasing number of i-gaming companies, international call centres, manufacturing companies etc., the number of expatriates living and working in Malta has risen sharply – fuelling demand for higher-end residential and commercial property. This rise in demand for high-end commercial and residential property is set to continue, providing developers and investors with the opportunity to contribute to and benefit from the market.

Every company registered in Malta requires a local address. Obtaining a business address is generally an easy, straightforward process. Entities requiring a proper presence in Malta, with employees and an actual business address have the options of renting serviced office space, or alternatively, renting or purchasing an independent office space.

Purchasing property in Malta for residential purposes is also possible if the person is an EU citizen, consequent to the right to EU wide freedom of movement. However, a third country national wishing to purchase property in Malta, must first obtain clearance from the Minister responsible. While obtaining ministerial clearance is generally a straightforward process, there is the option of purchasing a property within Special Designated Areas (SDA). Properties within SDAs do not may be purchased without having obtained the said permit. The purchase procedure is the same as when a local wishes to purchase a property.

The properties, which are considered to fall within the SDA areas, are the following:

In Malta

- Tas-Sellum Residence, Mellieha;
- Madliena Village Complex, Madliena;
- Metropolis Plaza, Gzira;
- Tigne Point and Fort Cambridge, Sliema;
- Portomaso Marina Development, Portomaso Extension and Pender Gardens, St. Julians;
- Smartcity, Kalkara;
- Tà Monita Residence, Marsascala; and
- Cottonera Development, Cottonera.

In Gozo

- Fort Chambray, Għajnsielem; and
- Kempinski Residences, San Lawrenz.

When purchasing a property, one first signs a promise of sale, whereby the buyer generally gives the seller a deposit (typically 10%). Stamp Duty on the purchase price must be paid as to 1% of the purchase price on signing of the promise of sale agreement and the balance on signing of the final contract, together with the notarial fees and cost of searches. When the property being purchased is to be used as purchaser's ordinary place of residence, total stamp duty is charged at 3.5% on the first €150,000 and 5% on the remaining value. For any other property purchase, total Stamp Duty is charged at 5% on the total value of the property. No Stamp Duty is charged on the value of the movable property (furniture and fittings) being transferred with the immovable property.

This 1% is deposited with the tax authorities together with the registration of the promise of sale contract. The promise of sale is tied to a specific timeframe and the parties have to enter the final deed of sale by the said date. During this period, the buyer can carry out all the legal research on the property in question, establish financial arrangements and obtain any permits if necessary. The seller has to proceed with selling when called for contract, and the buyer will lose his deposit if the deed of sale is not entered into by the specific date (unless extended by agreement).

Gaming

Although Malta's i-gaming industry had grown considerably in the last 10 years, there is still room for the sector to grow further. The development of the iGaming industry in Malta was possible with the determination and foresight of key players who identified the potential of the industry. In the past decade, Malta has projected itself into the forefront of the online gaming industry. Taking a pro-active approach and pre-regulating to cover for any changes in the sector, has made Malta a stable and attractive jurisdiction for the industry. Its success is attributable not only to the tax incentives present in the market, but also due to the Malta Gaming Authority regulating this niche industry thoroughly, and the removal of excess bureaucracy related to the licencing procedure.

Energy & resources

The energy sector in Malta is regulated by the Malta Resource Authority (MRA), which is the entity responsible for natural resources, the conservation thereof, and climate change. The energy sector in Malta has been subject to governmental monopoly and it has only recently been partially liberalised. Although sources of energy have become diverse, Enemalta plc remains the only entity responsible for energy distribution and energy infrastructure of the Maltese Islands.

Competition and consumer protection

The Malta Competition and Consumer Affairs Authority (MCCAA) safeguard consumers in Malta. The establishment of this authority in May 2011 is a result of industry leaders pushing for the protection of Maltese clients and consumers. MCCAA is responsible to promote, maintain and encourage competition and to safeguard the interests and welfare of the consumer. It is divided into four entities: the office for competition; the office for consumer affairs; the technical and regulations division; and the standards and metrology institute. It is a one-stop shop for market regulation, ensuring product safety and registering complaints by consumers.

Consumer related issues may be submitted to the Consumer Claims Tribunal (CCT). This is the mechanism set up with the objective of resolving disputes between consumers and traders when conciliation has not resulted in an agreement on all issues in dispute between a consumer and a trader. The Tribunal may hear claims about the hire or purchase of goods or services if the value of the claim for compensation does not exceed the sum €3,494.06. Although a relatively low cap. It encourages consumers to bring forward claims without having to suffer the expense of the time-consuming process of instituting and closing a court case.

Logistics Hub

Huge investment has turned Malta into a major logistics hub, offering sea and air logistics solutions with a flourishing Freeport and excellent air-cargo facilities. Malta also boasts extensive passenger air links offering non-stop flights to some 70 cities with almost 1000 international flights per week.

Chapter 3 Banking and finance

The banking system

The Central Bank of Malta (CBM), established in 1968, four years after Malta's independence, and becoming the responsible entity to issue and control currency notes and coins in Malta, which currency, at the time, was the Maltese Lira.

On 1st January 2008, almost four years after its accession to the EU, and after becoming a member of the European System of Central Banks (ESCB) and also sitting on the General Council of the European Central Bank (ECB), Malta adopted the Euro, which became the working currency, and the CBM started following the rules and principle applicable within the Eurosystem.

The banking sector in Malta as regulated by the MFSA, has seen an exponential growth in the past decade, especially in the commercial and trade sector. There are a number of retail banks operating in Malta, as well as over twenty international commercial and trade banks, providing advanced systems of banking whether in person or online, and a wide range of services and investment options. Through the regulation of the MFSA, Malta provides a wide range of possibilities in the financial institutions realm, especially in online markets.

Sources of funds

Malta follows the European Own Funds regulations, requiring a substantial amount of capital to be injected at the initial stage and to be retained during its operations. Malta's strong banking sector has supported the growth of various other sectors and industries. Capital buffers retained by local banks are among the highest in Europe, and Maltese banks have consistently returned solvency ratios that are almost twice the EU average. Maltese banks remain well capitalised, have high liquidity ratios, and sound, well-diversified portfolios. Their funding is largely sourced from customer deposits.

Currency exchange control

On 1 May 2004 Malta abolished all exchange controls. External transactions (capital and current transactions between resident and non-residents, whether in or outside Malta) are not subject to any restrictions. However, for statistical purposes, certain external transactions involving residents still need to be reported to the Central Bank of Malta. This applies for licensed agents who deal in foreign exchange.

Other financial and investment institutions

Whilst credit institutions are regulated in terms of the Banking Act (CAP.371), financial institutions, including Electronic Money Institutions (EMIs) and Payment Services Providers (PSPs) are regulated by the Financial Institutions Act (CAP.376).

The business of banking or of issuing electronic money in or from Malta may only be carried out by a company in possession of a licence granted by the MFSA. Credit institutions authorised in another EU/EEA Member State desirous of establishing a branch or wanting to provide services in Malta may exercise their passport rights in accordance with the relevant provisions of the European Passport Rights for Credit Institutions Regulations (Legal Notice 88 of 2004, as amended), in which case they would be exempt from the licensing requirement under the Banking Act.

Investment services are regulated by the Investment Services Act (Chap. 370 of the Laws of Malta), which establishes the regulatory framework for two broad classes of licences namely Investment Services Licences, which apply to providers of investment services; and Collective Investment Schemes Licences, which apply to investment funds, including UCITS, PIFs, AIFs and Private CISs. The MFSA is the

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sole regulator responsible for the licensing, regulation and supervision of Investment Services Providers, Collective Investment Schemes and Regulated Markets.

Chapter 4 Business entities

Sole proprietorship - Traders

Often referred to as self-employment, sole proprietorship is the simplest and easiest form of doing business in Malta. The sole trader is required to register with the ETC as a self-employed person, with or without employees, as well as with the Inland Revenue Department in order for a tax number to be allocated. Unlike other business entities, the said registrations are sufficient to enable the sole-trader to start operating.

The sole trader is exclusively responsible for controlling the business, and is the one who finances the business. All profits go to the individual. With respect to taxability of profits, tax liability arises even if profits are not drawn. Losses may be offset against tax on other income.

Partnership

Partnerships can be of two types: partnership "en commandite"; or a partnership "en nom collectif."

A partnership en commandite, or a limited partnership, has its obligations guaranteed by the unlimited, joint and several liability of partners, coined 'the general partners' and by the liability, limited to the amount unpaid on the contribution, if any, of the other partners, being 'the limited partners'. Where one (or more) of the general partners is a body corporate, the unlimited liability will rest on one or more of its members. The administration and representation of the partnership en commandite is vested in the general partners, and unless otherwise is specified in the deed of partnership, it shall so vest severally. Certainly, no limited partner can take place in the administration and management. Whilst a partnership en commandite may have its capital divided into shares, it will, in such a case, be treated as a Limited Liability Company for income tax purposes and therefore charged the corporate tax rate of 35%.

On the other hand, a partnership en nom collectif would have its obligations guaranteed by the unlimited, joint and several liability of all of its partners. For income tax purposes, such a partnership requires that all partners declare their share of the profits in their personal tax returns, and tax is therefore charged at the applicable personal rates of tax.

Limited companies

The main division of Limited Liability Companies in Malta lays between the public and the private limited liability companies. The registered limited liability entities can be changed, if applicable, and a private company can become a public company, objects and purposes can be changed, share capital can be increased or decreased, and so forth. This gives the entity the structured stability it requires to operate as well as the flexibility to adapt to the business's needs. All companies are subject to a flat rate corporate tax of 35% on profit.

Trusts

In Malta, the setting up of trusts is regulated by the Trusts and Trustees Act. The Act provides for the creation of trusts and the authorisation of trustees to act as such. A trust can come into existence in a number of manners, including by oral declaration and by a will.

Whether or not the proper law of the trust is Maltese law, or the property settled under the trust is located in Malta, a person resident or operating in Malta accepting to act as a trustee of a trust requires authorisation by the MFSA. Authorisation is granted pursuant to the filing of an application and provided that the conditions at law required to act as trustee are satisfied.

An individual trustee must be an approved person and in possession of experience and qualifications consistent with the duties of the trustee. S/he must be a resident of, or operating, in Malta. Corporate

trustees must be established as a limited liability company in Malta or in an approved jurisdiction, with the object of acting as trustee, the beneficial owners thereof must be approved persons and its directors must be at least three in number, all of whom must also be approved persons.

In terms of the Maltese tax law, where at least one of the trustees of a trust is a person resident in Malta, tax shall be payable in Malta at the rate of 35% on any income attributable to a trust, being income accruing or derived from the property, under trust or acquired, in the course of administration of such trust. However, where the attributable income is limited to certain classes of income and the beneficiaries are persons who are either not ordinarily resident, or not domiciled in Malta, the chargeable income could be deemed to be derived directly by the beneficiaries and thereby would not be chargeable to tax in Malta in the hands of the trustee. Malta trustees can also elect that the trust be treated as a private limited liability company for tax purposes, which option would entitle the beneficiaries to refund on the tax paid by the trustee, as if they were non-resident shareholders of a company.

Public Limited Liability Company (PLC)

A PLC in Malta is registered with a minimum issued share capital of €46,600 (rounded-up) subscribed to by at least two persons and having a minimum of 25% of it paid-up. A PLC requires the appointment of at least two directors, and a company secretary. It is not limited to the number of persons who can subscribe to the shares of the company, however, new allotment of shares must be offered on a pre-emptive basis prior to being offered to the general public, which must also be accompanied by a prospectus.

Private Limited Liability Company

A private limited liability company is validly constituted in accordance with the Companies Act once a Memorandum of Association is entered into, shares therein, which is set at a minimum one €1,200 (rounded-up) are subscribed to and at least 20% paid-up by at least two persons. The company must have at least one director and a company secretary appointed. In case of a Single Member Company, whereby only one person is subscribed to the shares, some restrictions may apply. Once all documents are submitted to the RoC, the registration process of a private limited liability company can take as little as 24 hours to be finalised. Upon registration, the Registrar of Companies shall issue a Certificate of Incorporation and provide the newly established company with a Company identification number.

Investment Companies

Malta has established two vehicles, which can be used as Investment Companies: the SICAV, which is an investment company with variable share capital; and the INVCO, which is an investment company with a fixed share capital. The SICAV outweighs the INVCO in popularity due to its less restrictive nature.

INVCO and SICAV

The INVCO, is an investment company with a fixed share capital, and is typically established as a vehicle for investment in securities with the aim of spreading investment risk and providing members of the company with the benefit of the results of the management of its funds. The closed-ended nature of this set-up has seen its usage being very limited, being subject to a number of restrictions, namely that:

- i) its holdings in other companies not being investment companies with fixed share capital must not exceed 15% by value of its investments;
- ii) the distribution of the INVCO's capital profits is prohibited by its memorandum and articles of association; and
- iii) an INVCO cannot retain more than 15% of income derived from securities.

Moreover, an INVCO has a fixed number of units in issue throughout its duration, and the value of each unit depends on supply and demand, as opposed to a SICAV's unit-value depending on the net asset value of the scheme. Additionally, the INVCO enjoys low levels of flexibility when it comes to investment strategies it can follow, in that it must 'mainly' invest in securities, contrary to SICAVs, which can invest in securities and/or in other movable SICAV.

The Maltese Regulations on investment companies with a variable share capital, provide for the establishment thereof as a multi-fund company where each class of shares would constitute a sub-fund of the company. All assets and liabilities of one such sub-fund would for all purposes be treated as separate from the patrimony of the other sub-funds under the SICAV. The SICAV and its segregated sub-funds would constitute a single legal entity, affording no separate legal identity to the sub-funds. The management of the sub-fund would be entrusted to the managers of the SICAV, although each sub-fund may appoint investment advisers to the said managers.

Malta has developed a regime whereby companies carrying out the business of insurance can opt to operate under a corporate set-up, which allows a segregation of assets. Through a SICAV company, which operates in the insurance business, Malta has introduced Protected Cell Companies (PCC) and Incorporated Cell Companies (ICC). Both the PCC and the ICC allow for a segregation of assets in a particular cell company, where each cell company would have to be duly registered with the regulator, however while the ICC provides for each cell to have a distinct legal personality, the cell company in the PCC shares the same legal personality as the PCC. This means that any creditors of a particular cell company of a PCC would be able to attack the assets of the particular cell company and those of the PCC, however the assets in the other cell companies of the PCC would still remain protected. Both regimes allow investors to segregate the low risk business from the high-risk investments, and can have different investors for each cell companies, facilitating investment, together with having clear and distinct profits and losses.

Cell Companies can only be used for the business of Insurance as regulated by the Insurance Act and used for insurance or re-insurance purposes.

Establishing a branch in Malta

Foreign enterprises, which decide to establish presence in Malta, may consider the setting up of a branch in Malta. The Maltese Companies Act - Chapter 386 of the Laws of Malta defines an overseas company as a corporate body constituted or incorporated outside Malta. Overseas companies, which set up branches in Malta, are required to register the branch with the Registrar of Companies within one month from establishing a branch or a place of business in Malta.

Any legal person may establish a branch in Malta. The advantages of establishing a branch in Malta are the following:

- i) Physical presence in Malta is not required. However, the foreign corporation must appoint a local representative for its branch;
- ii) Malta has developed a wide-ranging double tax treaty network extending over 70 countries. This implies the exemption from income payment if the foreign company's country has signed double tax treaties with Malta;
- iii) No further capital investment is required to register;
- iv) The branch could benefit from Malta's competitive tax system. Thus, branches of overseas companies are only taxable in Malta on income arising in Malta any foreign source income is not subject to tax in Malta. They are taxed at the corporate flat rate of 35% however, upon a distribution of dividends by the overseas company the shareholders of the overseas company may apply for a refund, which may reduce the effective tax of the overseas company's branch profits to 5%; and
- v) The transfer of the main corporate seat to Malta through a branch is also possible.

Private trust company

Malta has created a hybrid PTC also known as a family trust, such set-up is created through a limited liability company whose objects and activities are limited to acting as a trustee to specific settlors with respect to the family estate, for the benefit of the family members or any such beneficiaries agreed to by the settlors. Such company cannot hold itself out to the public or act as a trustee on behalf of more than five settlors at a time.

One of the main advantages offered by such an instrument is that a PTC need not be subjected to the rigorous authorisation process applicable to a professional trustee; it must however obtain proper recognition by the authority for acting as such, within its limited scope.

Advantages and requirements to set up a PTC in Malta:

- i. Different settlors may make use of the same entity and thus ensure continuity and proper management of the assets.
- ii. The Company must have three directors, one of which may be a settlor, and another must have experience with trust administration.
- iii. The assets settled into the company are owned by the Company and not by a private entity, which allows comfort to those who wish to settle their assets into a trust but are unhappy to transfer title of their assets to an unknown entity or person.
- iv. Malta has a solid reputation in the field, and an excellent track record in this sector which continuously evolves and seeks avant-garde solutions required by the industry.

Foundations

A foundation is defined in the Maltese Civil Code as an organisation constituted by founders whose assets are destined for the fulfilment of a specified purpose or for the benefit of a named person or class of persons, entrusted to the administration of designated persons, and which assets and ensuing liabilities, are kept distinct from those of the founders, administrators and beneficiaries. It must be constituted in writing, whether by public deed or will, and shall include the value of the endowment, which must be at least €1,200 worth of money or property. Whilst it must be registered as a legal person, very little information is available to the public ensuring the confidentiality that often accompanies the creation of such vehicles.

Despite being prohibited to trade, foundations can be used for limited commercial activities, such as to be endowed with commercial property or a shareholding in a profit making enterprise and may own a franchise, a trade mark or other asset which gives rise to income, as well as a ship as long as the foundation is only the passive owner of such assets.

A foundation may be established with segregated cells each with their own assets and for a particular purpose, affording a termination date prior to the termination of the mother-foundation. The foundation statute must empower the administrators to establish segregated cells, and if cells are established together with the foundation, then only the foundation is registered. The future establishment of cells must be notified to the Registrar for Legal Persons.

By default, a foundation, shall be treated in the same manner as a company that is ordinarily resident and domiciled in Malta and any rules pertaining to the taxation of income applicable to companies shall equally apply to foundations, and therefore tax shall be payable on the profits of a foundation at the rate of 35%. However, the administrators of a foundation may elect that the foundation be taxed as a trust.

Chapter 5 Company formations and administration

Forming a company

A Malta company shall not be validly incorporated unless a Memorandum of Association is registered with the Maltese Registry of Companies in accordance with the Companies Act, accompanied by documentation identifying the shareholders and directors, and references and declarations where applicable.

The incorporation process for Maltese private limited liability companies is normally accomplished within 24 hours and is entrusted to the Registry of Companies, headed by the MFSA.

Upon incorporation, a registration fee is payable to the Registry of Companies and it varies according to the authorised share capital. Registration fee for a company with the minimum authorised share capital is of €245.

Shares and capital structures

The maximum number of shareholders for a private company is fifty, whereas there is no maximum number of shareholders in the case of a public company.

The minimum number of shareholders is typically two, however, a single-member company may also be registered under the Companies Act. In the case of a single-member company, the Memorandum of Association must indicate the main trading activity of the company, whilst the sole member can be a company, no director can be a corporate director.

The minimum authorised share capital of a private company is €1,165 and of a public company is €46,588. Where a company is incorporated with the said minimum authorised share capital, all shares must be issued, albeit that they can be only 20% paid up in the case of private companies, and 25% paid up in the case of public companies.

Initial issued share capital must be deposited in a bank account in the name of the company in formation and a deposit slip in relation thereto is issued for presentation to the Registry of Companies. Alternatively, the shareholders may engage a licenced corporate services provider in Malta, deposit the issued share capital in its clients' account, and the provider shall issue a so-called practitioner's certificate for presentation to the Registry of Companies.

Company administration

Every company registered in Malta must have a registered office in Malta. This may be at the office of a firm of lawyers, accountants or other licenced corporate services providers.

Every company must also have a company secretary. The company secretary's central role is administrative and not managerial, primarily the taking of minutes of board and general meetings. Companies are required to submit a variety of documents to the Registry of Companies for a number of matters, such as changes in representatives and shareholding, and although this duty is imposed on all the officers of the Company, this is a role usually undertaken by the company secretary. The company secretary must be an individual but not necessarily resident in Malta.

Directors

Every public company must have at least two directors whereas every private company must have at least one director. The Companies Act does not set a minimum level of expertise, thereby affording the shareholders the discretion to select directors, with the level of expertise as they deem necessary for the company. Nevertheless, the Memorandum and Articles may require the appointment of executive and non-executive directors. The first directors of the company are appointed by mention in the

Memorandum of Association submitted to the Registry of Companies for the incorporation thereof. The Companies Act requires the Memorandum of Association to state the number of the directors, the name and residence of the first directors and, where any of the directors is a body corporate, the name and registered address thereof.

When the company is carrying out a particular activity or requires licencing, the MFSA requests that such persons undergo the fit and proper test, in order to ascertain that the individual is competent to carry out certain activities and is of good character. This is done in order to prevent individuals abusing their position, or to identify those who are not competent to appropriately lead the company.

The members of the company retain the power to remove any director before the expiration of his/her period of office. This can be done by a resolution being considered at a general meeting of the company and passed by those having the right to attend and vote in accordance with the company's memorandum or articles.

Type of directors

A Maltese company is required to have a board of directors that must be comprised of a chairperson, executive and non-executive directors. The owners or shareholders of companies in Malta nominate company directors. The chairperson will usually lead the board of directors, ensure the board receives all relevant information in a timely manner and will act as a communication channel between the company and its shareholders.

Non-executive directors will not deal with the day-to-day management of the company, but will play a key-role in supervising the executive directors and will mainly get involved in resolving conflicts. According to Maltese law, however, executive and non-executive directors have the same duties. Non-executive directors should get involved in stimulating the management team in achieving their goals according to the Corporate Governance Code in Malta. Non-executive directors should also be impartial and independent.

Duties of directors

A director of a company is bound to act honestly and in good faith in the best interests of the company. Directors are bound by law to promote the well-being of the company and are responsible for the general governance of the company and its proper administration and management and the general supervision of the company's affairs. Additional general duties of directors are better classified under the duties of care and skill and the duty of loyalty.

Apart from the above duties, directors are also required to fulfil a number of additional, largely administrative duties emerging from the Companies Act, such as filing of documents and returns with the Registry of Companies. It is important to note that directors can be held personally liable in case of misconduct.

Other statutory requirements

All companies must prepare an annual return in the prescribed format to be completed upon each anniversary of its registration. The return must be filed with the Registrar of Companies within 42 days from the date it is made up. A payment of between €100 and €1,400, depending on the authorised capital, is to be submitted along with the return, is required.

Companies are also required to file a copy of the annual accounts. These must generally be accompanied by a copy of the auditors' report thereon, and the directors' report. The annual accounts must be filed within 10 months from the end of the financial year, with a grace period of 42 days.

The format of the accounts to be submitted depends on the size of the company. Small companies may draw up abridged balance sheets and abridged layouts of profit and loss accounts. A small company is one, which on its balance sheet dates does not exceed the limits of two of the three following criteria:

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- Balance sheet total: € 2,562,310.74;
- Turnover: € 5,124,621.48;
- Average number of employees during the accounting period: 50.

Private companies, which on their balance sheet date, do not exceed the limits of two of the three following criteria:

- Balance sheet total: € 46,587.47;
- Turnover: € 93,174.94;
- Average number of employees during the accounting period:

shall be exempted from the requirements concerning, auditing of accounts and such companies may, draw up abridged balance sheets and abridged layouts of profit and loss account and abridged notes to the accounts.

Meetings

Meetings of the Board of Directors

All decisions of the company, except the ones entrusted to the shareholders, are subject to resolution of the board of directors. The Articles of Association will establish the proceedings for meetings of the board, including the quorum of directors who must be present for meetings to take place, and in default of which the meeting would be postponed. Typically, a simple majority is required for a resolution to pass. The articles may also require the appointment of a chairperson who would have a casting vote.

General Meetings

Every company must hold an annual general meeting. Every general meeting other than the annual general meeting is called an extraordinary general meeting. There are only a few decisions entrusted to the shareholders, however, they are significant. These include the appointment and removal of directors; the appointment, remuneration and removal of an auditor; changes to the Memorandum and Articles; and increases in the issued share capital. The law stipulates whether an ordinary or extraordinary resolution is required in each case. Nevertheless, the Memorandum and Articles may stipulate other matters, usually entrusted to directors, to be decided by the shareholders, and may stipulate a percentage higher than the one established at law for resolutions to pass.

Liquidations

Company liquidation in Malta is the procedure a company employs when concluding its business activities or when these activities can no longer continue due to insolvency. Maltese law establishes that a company can be wound up either: voluntarily; by the members; by the Creditors; or by the court.

Where the members resolve to dissolve the company, the company has to be solvent, and the directors have to make a statutory declaration to that effect prior to the resolution. Here, the members choose a liquidator, who is turn accountable to the members.

Where no such solvency declaration is made prior to the resolution, the process shall take the form of a Creditors' Voluntary Winding Up, in which case the creditors are entitled to nominate a liquidator.

Chapter 6 Financial reporting and audit requirements

Reporting and audit requirements

Investors may opt to perform business in Malta, under more than one legal form. Such forms may include as a sole trader, partnership or under an incorporated company.

There is no statutory obligation to prepare audited annual financial accounts for sole traders and partnerships; however, a form of an income statement has to be submitted for tax compliance purposes. Partnerships are legally bound to keep proper books of account, which must be available for scrutiny, by individual partners.

The third option for doing business in Malta is through the incorporation of a company under the Companies Act or the Merchant Shipping Act. The directors of a company incorporated under the Companies Act, are required to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that year, in accordance to the requirements of International Financial Reporting Standards (IFRSs) as adopted by the EU or the General Accounting Principles for Small and Medium-Sized Entities (GAPSME - replacing GAPSE from the financial periods commencing on or after 1 January 2016).

GAPSME contains a number of measurement simplifications and a number of disclosure relaxations when compared to IFRSs as adopted by the EU.

In preparing these financial statements, the directors are required to adopt the going concern basis unless it is inappropriate that the company should continue in business. The requirements are to: select suitable accounting policies and apply them consistently; make judgements and estimates that are reasonable and prudent; account for income and charges relating to the accounting period on the accruals basis; value separately the components of asset and liability items; and report comparative figures corresponding to those of the preceding accounting period. The directors are responsible for keeping proper accounting records, which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Act.

Full financial statements include the following:

- a directors' report;
- an income statement;
- a balance sheet;
- a statement of changes in equity;
- a cash flow statement; and
- notes to the financial statements.

The directors must submit the annual financial statements including the directors' and the auditors' reports, for approval by the shareholders in general meeting as follows:

- private company - within ten months after the accounting year-end; and
- public company - within seven months after the accounting year-end.

Companies are obliged to deliver to the registrar a copy of the annual financial statements presented to the shareholders in the general meeting and of the directors' and the auditors' reports within 42 days from the end of the period for submitting the annual financial statements to the general meeting. Companies defined as 'small' by the Companies Act, may prepare and submit abridged financial statements to the MFSA.

Companies that fall under the definition of small and medium sized companies set out in the GAPSME regulations may opt to prepare the accounts in accordance to the said regulations. Under GAPSME, the

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full financial statements of small companies do not include statement of changes in equity and a cash flow statement.

The Companies Act includes certain provisions that are in conflict with IFRSs, in such instances the provisions of the Companies Act prevail. Financial statements of companies incorporated under the Companies Act have to be audited by a certified public accountant.

Companies incorporated under the Merchant Shipping Act are not required to submit their annual financial statements to the MFSA unlike those companies incorporated under the Companies Act. The current practice is that the directors opt to perform an audit for such companies so that they ensure that they are in compliance for tax purposes, unless the company qualifies for the tonnage tax scheme.

Companies having an investment in a subsidiary or subsidiaries constitute a group. IFRSs require groups to prepare consolidation financial statements. The Companies Act includes a number of exemptions for financial holding companies, small groups, and intermediate parent companies.

Audits are performed in accordance with International Standards on Auditing (ISAs). ISAs require that auditors comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatements. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to error or fraud. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial statements.

Reporting and audit deadlines

| Type of entity | Financial statements |
|--|---|
| Company | |
| Private | To be submitted to the MFSA 10 months + 42 days after year end |
| Public | To be submitted to the MFSA 7 months + 42 days after year end |
| | |
| Sole proprietorship | No submission is required |
| | |
| Investment services licence holders | To be submitted to the MFSA 4 months after year-end |
| | |
| Voluntary organisation | |
| Category 1 | Shall be filed with the annual return by not later than 15 th March of the following year |
| Category 2 | Shall be filed with the annual return by not later than 30 th April of the following year |
| Category 3 | Shall be filed with the annual return by not later than 31 st August of the following year |
| | |
| Limited partnerships | Financial statements need to be published within a period not exceeding 12 months from its year-end |

Chapter 7 Company taxation

Company taxation

Corporate income tax in Malta is levied at a flat rate of 35% on a company's chargeable income. Income subject to tax is based on the company's annual accounting profit adjusted for certain exempt income and disallowable expenses.

Expenses are allowed as a deduction against income as long as these are incurred in the production of the income and they are backed up by a relevant tax invoice. Unrealised gains, such as those arising from difference in exchange rates and fair value movements on investments, are not subject to tax in Malta. Malta also exempts from corporate tax those dividends and capital gains arising from a participating holding as explained in subsequent sections.

Resident companies

Malta levies taxation on companies on the basis of their residence and domicile. A company incorporated in Malta is deemed to be resident and domiciled in Malta by virtue of its incorporation. Resident and domiciled companies are subject to tax on their worldwide income, irrespective of whether the income is remitted or received in Malta.

A company which has not been incorporated in Malta may also be deemed to be resident but not domiciled in Malta if it is effectively managed and controlled in Malta. Resident but not domiciled companies, are subject to tax in Malta on Maltese sourced income and on foreign income remitted to Malta.

Non-resident companies and entities

As mentioned above, companies which are incorporated outside Malta may still be considered to be resident in Malta by virtue of their effective management and control. In general, a branch of a foreign entity may also be considered to be resident in Malta and hence taxable only on foreign source income remitted to Malta and on Malta source income.

Tax returns and assessment

Companies resident in Malta for tax purposes are required to prepare and submit with the Inland Revenue Department, an annual income tax return based on audited financial statements irrespective of their level of activity in Malta. Income tax returns are due to be submitted within nine months from the company's financial year-end.

Corporate income tax is also due within nine months of the company's year-end, however companies which have more than 90% of their trade conducted outside of Malta may benefit from an extension to pay their corporate tax. In this case, corporate income tax shall be due to be paid within eighteen months of the company's year-end. This 18-month period may be altered if a dividend is distributed prior to the payment of corporate tax.

Companies which do not qualify for the 18-months extension as explained above are required to effect provisional tax payments for tax due in the same year in three instalments. Provisional tax is paid in instalments of 20%, 30% and 50% on 30th April, 31st August and 21st December of each year. Provisional Tax is calculated as an amount equivalent to the tax chargeable according to the last self-assessment that was due to be filed before the commencement of the calendar year in which the first provisional tax payment falls due. The taxpayer may reduce the amount of provisional tax due if it deems that the company will not earn profit which will give rise to the amount of provisional tax, however, in the event that the actual tax charge will result to be higher than the provisional tax reduced, it will be liable to additional tax on the unpaid provisional tax. Provisional tax payments are credited against the company's tax liability.

Profits subject to tax

Malta levies tax on all income and on certain capital gains. 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 the 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;
- business, goodwill, business permits, copyright, patents, trademarks and trade-names;
- beneficial interest in a trust;
- interest in a partnership;
- securities which were subject to an intra-group exemption, which group ceases before the lapse of six years; and
- market value of shares through a change in the issued share capital or voting rights of a company.

Capital gains are taxable at the corporate income tax rate of 35%.

Employee taxes

Employers in Malta are bound to contribute towards their employees' social security contribution. In Malta, the burden towards Social Security is borne equally between the employer and the employee. Generally, Social Security Contributions are paid by the employer and the employee at the rate of 10% of the gross weekly wage subject to a minimum or maximum amount. Currently the weekly contribution varies between a minimum of €16.80 and a maximum of €42.57 (or €34.49 for employees born up to 31st December 1962).

Maltese legislation adopts the methodology of the Final Settlement System whereby an employer is required to deduct income tax and social security contributions from the wage paid to the employee. An employer is required to provide the employee with a payslip with each monthly salary containing details of the gross wage paid and the deductions deducted from the monthly salary in relation to the employee's personal tax and social security contributions. The employer is also required to file the FS5 form with the Tax Department in Malta containing details of the gross salaries paid to all employees and amounts deducted from employees' wages for their tax contribution and social security contribution and the social security contribution borne by the employer. A payment for the employees' taxes should be made every month together with the submission of the FS5 form.

Calculating trading profits

Taxable trading profits are based on the company's income statement adjusted for expenditure which is not deductible for tax purposes, and income which is not subject to tax.

Expenditure is allowed as a deduction against income provided it is wholly and exclusively incurred in the production of that income and that the expenditure is backed by a relevant tax invoice. The expenditure deductibility test requires a very close connection between the expense and the income against which it is claimed.

No deduction is allowed for provisions for bad debts, and for bad debts incurred in activities other than a trade, business, profession or vocation.

Interest deduction

Interest on any borrowed monies is an allowable deduction if it is paid to acquire the income against which the deduction is being claimed. Interest expenses are deductible even if the borrowing was made for capital purposes, as long as the income against which the interest is being deducted has been generated by the same capital employed.

Malta does not adopt Thin Capitalisation Rules.

Capital assets

The provision for depreciation accounted for in the company's Income Statement is not allowed as a deduction against trading income for tax purposes. However, local tax legislation provides for a deduction with respect to use of assets referred to as the 'Capital Allowances'. Capital allowances are the equivalent of depreciation but are based on the useful life of assets as provided for by tax legislation, depending on the nature of the asset.

The assets that qualify for capital allowances are:

- Plant and machinery, including machinery, equipment, fixtures, motor vehicles and similar fixed assets; and
- Industrial buildings and structures, which are defined as hotel buildings, factories, and parking spaces, excluding the cost of land.

Double taxation relief

Taxpayers that satisfying the relevant criteria for relief from double taxation are entitled to double taxation relief in terms of local tax legislation on income which suffered tax in a foreign jurisdiction and which is taxable in the hands of the recipient in Malta. Relief from double taxation is granted in the form of a credit.

- Treaty Relief - this applies in cases where a double taxation agreement is in place between Malta and the other country levying tax.
- Unilateral relief - is granted in the absence of a double taxation treaty in terms of the unilateral relief provisions of the Income Tax Act.
- Commonwealth relief - this mechanism is similar in nature to treaty relief, but is granted when the other jurisdiction forms part of the Commonwealth.
- Flat Rate Foreign Tax Credit - subject to certain conditions, this mechanism provides for a deemed foreign tax of 25% of the foreign income generated by the company.

Withholding tax

In general, Malta does not levy withholding tax on outbound payments of interest, royalties and dividends. Payments to a non-resident of income subject to Maltese tax are subject to withholding tax at 35% if the non-resident is a company and 25% in other cases.

Capital gains tax (CGT)

Tax on capital gains is levied only on a few classes of capital gains as listed above.

Any capital gains realised by a company are aggregated with the company's trading income and taxed at the corporate tax rate of 35%, with the exception of gains arising from the disposal of immovable property. Transfers of immovable property are subject to a final tax of 8% on the value of the property transferred. In the event that the company does not trade in immovable property, and the property disposed does not form part of a project, tax is payable at 5% of the transfer value if the property is disposed of within five years from date of acquisition. In the event that the property sold was acquired before 1 January 2004, the rate of tax is increased to 10% of the transfer value.

Use of tax losses

Losses incurred in a trade, business, profession or vocation are allowable as a deduction against income from any other source and against capital gains. Unabsorbed tax losses can be carried forward indefinitely and can be deducted against the company's future income.

Maltese income tax legislation allows also a mechanism whereby tax losses may be transferred between companies forming part of the same group, provided that certain conditions are met, including but not limited to the following:

- i. both companies are subsidiaries of the same holding company to the extent of more than 50%, or one company is the subsidiary of the other to the extent of more than 50%;
- ii. both companies are resident in Malta for tax purposes;
- iii. both companies have the same year-end; and
- iv. tax losses may be surrendered only in the year in which they arise.

General anti-avoidance provision

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. The Commissioner may issue an order in writing to determine the tax liability entitlement to tax refund in such manner as may be necessary and to nullify or modify the scheme and consequent advantage. The taxpayer has the right to object this order and to appeal from the decision of the Commissioner refusing that objection.

Transfer pricing

Malta does not have transfer pricing rules.

Planning points for foreign investors

Foreign investors investing in Malta may benefit from a number of provisions embedded in local tax legislation aimed at attracting foreign investment to Malta. Malta adopts the full imputation system of taxation of dividends whereas the tax paid by the company is credited against the shareholder's income tax liability. This, coupled with the tax refund mechanism, which Malta offers as well as the participation exemption, makes Malta a very attractive jurisdiction.

Distributions out of a company's foreign income account or out of a company's Maltese taxed account to shareholders may trigger refunds to the shareholders of the Malta tax suffered on the distributed profits. The extent of tax refunded depends, inter alia, on the nature and source of income derived by the Maltese company. Depending on the circumstances, the refunds may result in a net post-refund tax leakage in Malta ranging between 0% and 10% as set out below.

The Participation Exemption

The Participation Exemption exempts from tax any income or gains derived by a company from a Participating Holding (PH). Amongst other possibilities, a PH exists when the company holds directly at least 10% shareholding in a company whose capital is divided into shares and such holding confers an entitlement to at least 10% of any two of:

- i. the right to vote;
- ii. profits available for distribution; and
- iii. assets available for distribution upon winding up.

A PH also exists for an investment of the equivalent of €1,164,000, or more, in a foreign entity that is held for an uninterrupted period of not less than 183 days or that satisfies certain other criteria.

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For a holding acquired on or after 1st January 2007, the following further conditions must be satisfied for the participation exemption to be applied to dividend income received from a PH:

- i. The dividend is received from a company which is resident or incorporated in an EU member state; or
- ii. The distributing company is subject to foreign tax of at least 15%; or
- iii. The distributing company does not have more than 50% of its income derived from passive interest or royalties.

Should the above conditions not apply, then both of the following conditions should apply for the dividend to qualify for the participation exemption:

- i. the equity holding by the company registered in Malta in the body of persons not resident in Malta is not a portfolio investment, and for this purpose, the holding of shares by a company registered in Malta in a body of persons not resident in Malta which derives more than fifty per cent of its income from portfolio investments, shall be deemed to be a portfolio investment; and
- ii. the body of persons not resident in Malta, or its passive interest or royalties, have been subject to any foreign tax at a rate which is not less than five per cent (5%).

Research and development (R&D) incentive

Malta promotes research and development activities as this practice is critical for the economy to retain its competitiveness and improve its position. In order to promote this practice, Malta has a number of schemes open for Maltese businesses to encourage more R&D practices.

These schemes are mainly in the form of tax credits awarded to businesses, which embark on projects leading to the acquisition, combining, shaping and using of existing scientific and technological knowledge and skills, and for the development of new products. Other schemes offer part-financing for enterprises when carrying out feasibility studies and incurring costs directly related to the secondment of highly qualified personnel engaged to work specifically on R&D projects.

Moreover, expenditure incurred for R&D projects is also deductible against a company's income upon computing the company's taxable income. Expenditure on R&D, which is deemed to be of a capital nature, may also be amortised over three years and can be deductible from income for tax purposes.

Chapter 8 Personal taxation

Residents and non-residents

Malta levies taxation on individuals on the basis of the person's residence and domicile status. A person who is ordinarily resident and domiciled in Malta is subject to tax in Malta on a worldwide basis, whilst persons who are resident but not domiciled in Malta are subject to Malta tax only on Malta source income and on foreign source income remitted to Malta. Capital gains derived from foreign sources are not be taxable in Malta even if received in Malta.

A person may also be resident in Malta temporarily in the event that the person is not staying in Malta on a habitual basis and actually spends less than 183 days on the island. In this case, the person is subject to tax in Malta only on income arising in Malta.

Income tax

The rates of income tax of a resident person depend on his/her status i.e. whether the person is single or married and whether he/she is maintaining children who are not gainfully occupied. The maximum tax rate for resident individuals in Malta is 35% for taxable income exceeding €60,000. Married couples may opt for a joint computation whereby the income of both spouses is aggregated and a single computation is prepared applying the married tax rates. In addition, parents who satisfy certain conditions may opt to be taxed at the parent rates of tax.

Non-resident persons having income subject to Malta tax and persons who are temporarily resident in Malta re subject to tax at the non-resident rates of tax.

Capital Gains Tax (CGT)

The capital gains tax in Malta is common to both companies and individuals. This means that an individual is subject to capital gains tax only on certain assets of a capital nature.

Any capital gains realised by an individual during a particular year is aggregated with his/her other income (such as employment income) and taxable at their personal tax rate. Capital gains arising from the sale of immovable property is subject to tax at a final rate as explained above and is not considered again in the computation of one's income.

Personal tax rates

The table below illustrates the personal income tax rates for resident individuals:

| Chargeable Income | | |
|---------------------|--------------|----------|
| From (in euro) | To (in euro) | Tax Rate |
| Single rates | | |
| 0 | 9,100 | 0% |
| 9,101 | 14,500 | 15% |

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| | | |
|---------------|----------|-----|
| 14501 | 19501 | 25% |
| 19,501 | 60,000 | 25% |
| 60,001 | and over | 35% |

| Married Rates | | |
|----------------------|----------|-----|
| 0 | 12,700 | 0% |
| 12,701 | 21,200 | 15% |
| 21,201 | 28,700 | 25% |
| 28,701 | 60,000 | 25% |
| 60,001 | and over | 35% |
| Parent Rates | | |
| 0 | 10,500 | 0% |
| 10,501 | 15,800 | 15% |
| 15,800 | 21,200 | 25% |
| 21,201 | 60,000 | 25% |
| 60,001 | and over | 35% |

The table below illustrates the personal income tax rates for Non-Resident Individuals:

| Chargeable Income | | |
|--------------------------|---------------------|-----------------|
| From (in euro) | To (in euro) | Tax Rate |
| 0 | 700 | 0% |
| 701 | 3,100 | 20% |
| 3,101 | 7,800 | 30% |
| 7,801 | and over | 35% |

Temporary residents

Temporary residents are persons who stay in Malta for a temporary purpose without the intention of establishing their residence in Malta and who spend less than 183 days in Malta over a calendar year. Temporary residents are taxable in Malta on Malta source income at the non-residents rates illustrated above.

Calculating 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. Taxable income shall also include employment income including the value of any fringe benefits, determined in accordance with the Fringe Benefits Rules.

Fringe benefits include any benefit provided by reason of employment by an employer, or a related company, to an employee or to a member of his/her family. 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.

Employee share scheme

When a company grants an option to its employees to acquire shares, such share options become taxable when the option is actually exercised. The value of the said share option would be 42.85% of the excess of the price, which the shares would fetch in the open market on the date of the exercise of the option over the option price of the same shares, subject to the conditions contained in the Fringe Benefit Rules. Any gain realised from the transfer of shares acquired through the exercise of a share option constitutes a capital gain and is therefore subject to tax.

Other income

Other sources of income may be subject to tax separately, such as:

Dividend income

Malta adopts the full imputation system for the taxation of dividend income whereby the tax paid by the Malta distributing company on profits distributed as dividends is provided as a credit against the tax due by the individual on the gross dividend income. Since the maximum tax rate for individuals is equal to the corporate tax rate, no further tax should be due by the individual upon receipt of local dividend.

Investment income

Investment income such as interest from banks and local bonds may be subject to a final withholding tax of 15%. The tax is withheld by the payer of the income and paid directly to the Inland Revenue Department.

Rental income

An individual may opt to pay a final tax of 15% on gross rental income instead of including this income with his/her other income in the computation of taxable income.

Deductions

The below is an exhaustive list of deductions allowed by legislation against an individual's income provided the imposed conditions are met:

- i. school fees paid for children attending private schools, capped to a limit depending on the level of tuition of the child;
- ii. any alimony payments made to estranged spouses;
- iii. child care fees incurred by the person, capped at €2,000;
- iv. fees incurred in respect of homes for the elderly and disabled persons, capped at €2,500;

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- v. sports fees, and fees for cultural activities; and
- vi. school transport fees.

Additional information

Malta offers various residency programmes aimed to attract EU and non-EU citizens. These programmes include:

The Global Residence Programme

The Global Residence Programme is a programme designed to attract individuals who are not nationals of the EU, EEA or Switzerland and who are not long-term residents. Individuals benefitting from this programme benefit from a beneficial rate of tax of 15% on foreign income remitted to Malta.

Beneficiaries of the Global Residence Program are not precluded from working in Malta, provided they satisfy the requisite conditions for obtaining a work permit. Any Malta source income is taxable in Malta at a flat rate of 35%. Beneficiaries of the Global Residence Programme may also have special carers providing a service in their qualifying property, as long as all the requisite procedures are satisfied.

The Residence Programme

The Residence Programme is similar to the Global Residence Program but is designed to attract individuals who are nationals of the EU, EEA or Switzerland and who are not permanent residents of Malta. Similarly to beneficiaries of the Global residence Programme, beneficiaries of The Residence Program benefit from a flat rate of tax of 15% on any foreign source income remitted to Malta. Any Malta source income is subject to tax in Malta at a flat rate of 35%. Beneficiaries under this programme may also have special carers providing their services in the qualifying property of the beneficiary as long as all the requisite procedures are satisfied.

The Malta Retirement Programme

The Malta Retirement Programme (MRP) is a programme designed to attract nationals of the EU, EEA and Switzerland who are not in an employment relationship and are in receipt of a pension as their regular source of income. Individuals benefitting from this programme benefit from a reduced rate of tax of 15% on foreign income remitted to Malta, and may hold a non-executive post on the board of a company resident in Malta. This implies that the beneficiary would be prohibited from being employed by the company in any capacity.

The Highly Qualified Persons Rules

The objective of the Highly Qualified Persons Rules is the creation of a scheme to attract highly qualified persons to occupy 'eligible office' with companies licensed and/or recognised by the Malta Financial Services Authority, companies licensed by the Malta Gaming Authority and undertakings holding an Air Operators' Certificate or an Aerodrome Licence issued by the Authority for Transport in Malta.

Beneficiaries of this scheme will benefit from a flat rate of tax of 15% provided that the income amounts to at least €81,500, adjusted annually in line with the Retail Price Index. The 15% flat rate is imposed up to a maximum income of €5,000,000, the excess is exempt from tax.

Chapter 9 Labour regulations, welfare and social security

Employment and labour standards

The Employment and Labour Standards are regulated by Chapter 452 of the Laws of Malta – Employment and Industrial Relations Act. It consolidates both employment relations and industrial relations. Employment relations cover the following: conditions of employment; protection of wages; protection against discrimination related to employment; terminations of contract of service enforcements; and non-compliance related to employment and administration related to employment. Industrial relations define the legality between workers and employers.

Minimum wages and working hours

This area is regulated by the Wages Council Wage Regulation Orders, which focuses on specific industries. This is because different industries require different regulations with regards to night work, shift work and overtime. The national minimum wage is regulated by a subsidiary legislation under the National Minimum Wage National Standard Order creating a three tier for: those under 17 years of age; those aged 17 years; and the catchall group for those who are over 18.

A designated Employment Relations Board appointed by the minister prescribes the working weekly hours, which is 40 hours up to a maximum of 48 hours, which have to be overtime compensated; minimum period of daily rest and weekly rest.

Annual leave and holiday pay

Employees in Malta enjoy 16 days of public holidays and 192 hours as annual leave.

Parental leave

By law, each female employee is entitled to a defined amount of maternity leave without loss of pay or any other benefit. There are even a set of standards, which employers are obliged to follow when employees are pregnant. Women employees are eligible for 14 weeks of maternity leave, while a new father in employment is granted one-day leave. Parents have to be granted unpaid leave on the ground of birth, adoption, fostering or legal custody of children to enable them to take care of the child for a period of four months until s/he is 8 years old. The Social Security Act Chapter 318 of the Laws of Malta also grants 4 years of credited national insurance contributions for every child. Therefore, women in employment would not have missing national insurance contribution for a 4-year period for every child up to three children and a 2-year credited period for the fourth and more.

Employee leave conditions

Employees are eligible to the following leave conditions:

- 192 hours vacation leave;
- urgent family leave – entitled to time off from work on grounds of force majeure family reasons without the need to give advance notification;
- Sick leave:
 - full time employees – depending to the specific industry sector;
 - part-time employees – pro rata depending to the specific industry sector;
- marriage leave – 2 working days for full time employees, and pro rata for part-timers;
- injury Leave – one year injury leave on full pay, less injury benefit, and pro rata for part-time employees; and
- others – jury leave, witness leave and study leave.

Termination of employment

Dismissal and the rights and obligations are subject to strict regulation under this law. The employer may only terminate a contract of employment of the following basis:

- good and sufficient cause which should be scrutinised by the Industrial Tribunal;
- redundancy; and
- employee reaching retirement age

The law also specifies the notice periods for termination of employment for both employees under the indefinite contracts of service and fixed contracts.

Working permits

EU (except citizens of Croatia), EEA and Swiss nationals do not need an employment licence whilst other nationals require an employment licence to be able to work in Malta.

Union representation

Employee – employer relations are often strengthened by trade unions. There are a number of Trade Unions active in Malta. Membership is not obligatory.

Other employment and industrial relations information

Social security

Social security benefits are regulated by Chapter 318 of the Laws of Malta, which provides a framework for the payment of social insurance benefits, pensions and allowances, social and medical assistance, non-contributory pension (for which no national insurance contributions need to be paid); the payment of social insurance contributions paid by employees, employers, self-employees, self-occupied; and the state.

International social security agreements

The Social Security Act in Malta is harmonised with the EU regulatory framework as regards granting of benefits, pensions and allowances. Besides this reciprocal agreement with the EU member states, Malta also enjoys Reciprocal Agreements with Australia and Canada.

Pension plan

The pension system in Malta is regulated under Chapter 318 of the Laws of Malta. Those who have paid National Insurance contributions in the working life period will be eligible for a Maltese pension.

National insurance contributions have to be paid by all employees, and self-employed persons. The employed persons' contribution is up to 10% of their basic wage, while those self-occupied and self-employed pay national insurance contributions according to the table issued by the Commissioner of Inland Revenue with effect from every 1 January: <https://ird.gov.mt/services/sscrates.aspx>. Self-occupied are persons who are receiving active income while self-employed are persons who are receiving passive income. This definition is according to Chapter 318 of the laws of Malta

Contributors can be eligible for the pension as follows:

- i. At age 61, if 1,820 contributions have been paid up to this age from age 18 for those persons who were born from 1 January 1952 up to 31 December 1961. If this clause is not satisfied, the retirement year should be as follows:
 - a. Date of birth between 1 January 1952 to 31 December 1955, at the age 62;
 - b. Date of birth between 1 January 1956 to 31 December 1958, at the age of 63; and
 - c. Date of birth between 1 January 1959 to 31 December 1961, at the age of 64.
2. At age 61, if 2,080 contributions have been paid up to this age for those persons who were born between 1 January 1962 and 31 December 1968;
3. At age 61, if 2,132 contributions have been paid up to this age for those persons who were born after 1 January 1969.

Pensions are assessed, utilising both the number of contributions paid and also the incomes/ salaries earned during a specific period. The minimum contribution average is 15 for each year out of a:

- 35-year period for those persons born between 1 January 1952 and 31 December 1961;
- 40-year period for those persons born between 1 January 1962 and 31 December 1968; and
- 41-year period for those persons born after 1 January 1969.

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The maximum pensions issued from the Social Security Department is currently €229 weekly, which is the 2/3 entitlement of a maximum pensionable income of €17,933 annually. The lowest pension can be as low as €38 weekly.

Contributors should pay at least 10 full years of national insurance contributions to be eligible for a Maltese pension, however, those persons who have worked in EU/Canada/ and/or Australia will have their contributions aggregated in order to calculate their contribution average. The pension rate will be assessed utilising the Maltese paid up contributions.

Persons such as widows and those over 65 years of age are excluded from paying National Insurance Contributions.

Chapter 10 Indirect taxes

The main component of the indirect taxation system in Malta is the Value Added Tax (VAT). In general, VAT is chargeable on supplies of a trading nature with certain exceptions, at the rate of 18%. The supply of certain goods and services is subject to a reduced rate of VAT as per table below:

| Supply | Rate of VAT |
|--|-------------|
| The letting of, or the provision of, accommodation in premises required to be licenced in virtue of the Malta Travel and Tourism Authority | 7% |
| The supply of electricity | 5% |
| Certain medical accessories and items specifically used by the disabled | 5% |
| Printed material | 5% |
| The importation of works of art, collector's items and antiques | 5% |
| Domestic care services such as home care and care for the young, elderly, sick and disabled | 5% |

A person who is engaged in a trading activity subject to VAT is bound to register for VAT. The type of VAT registration depends on the type of supply and whether the business activity is considered to be small or otherwise. Mainly, VAT registration can be made either under:

- Article 10: registration – This is the general VAT registration technique when the business activity is not considered as small (turnover exceeding €14,000) and where the registered person will be charging VAT on its supplies and will have the right to claim input VAT on its expenditure. Persons who will be making "exempt with credit supplies" (as explained below) are also required to be registered for VAT under this article;
- Article 11 – This applies for traders whose business activity will be considered as small (turnover not exceeding €14,000). Persons registered under Article 11 do not charge VAT on their supplies even if these fall under the general rule, and do not have the right to claim input VAT on their expenditure; and
- Article 12 – Required when a non-taxable legal person intends to make an intra-community acquisition in Malta exceeding the threshold of €10,000.

As mentioned above, certain supplies of goods and services are exempt from VAT but the supplier retains the right to claim any input VAT incurred on his/her expenses. These are referred to as 'exempt with credit' supplies and comprise the following:

- exports and similar transactions referring to the supply of goods destined outside the community;
- international goods traffic meaning the supply of goods, which will be placed under a duty suspension regime;
- intra-community supplies of goods to persons identified for VAT with a valid VAT number issued by a member state;
- international transport and ancillary services;
- the supplies of brokers or other intermediaries;
- supplies in relation to sea vessels and aircraft;
- the supply of gold;
- the supply of food and pharmaceutical goods; and
- the supply of transport by scheduled bus service, scheduled inter-island sea transport and transport of pupils and carriage of workers.

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Other supplies are exempt from VAT and the supplier is not allowed to claim input VAT on expenditure incurred. These are referred to as '*exempt without credit*' supplies and include the following:

- transactions in immovable property, excluding some instances of letting of immovable property;
- insurance services;
- credit, banking and other related services;
- cultural and religious services, subject to approval by the minister;
- sports services conducted by non-profit making organisations;
- services supplied by independent groups and by non-profit making organisations to their members;
- lotteries and postal services;
- the supply of health and welfare services;
- the provision of educational services and training in arts;
- supplies of goods in respect of which the supplier had not qualified for input tax credits;
- broadcasting services by public radio and television bodies; and
- the supply of water services by a public authority.

Taxable persons engaged in exempt without credit supplies are not required to register for VAT since they will not be charging VAT on their supplies and do not have the right to claim input VAT.

Persons registered for VAT under Article 10 of the VAT Act are required to file VAT returns quarterly within the fifteenth day of the second month following the end of the relative VAT period. Any VAT due shall be payable upon the submission of the VAT return.

Accounting for indirect taxes

VAT is accounted for on an accruals basis, meaning that any invoice received or issued in respect of a taxable supply should be included in the relative VAT return irrespective of whether this was paid or not.

The prescription period for VAT is six years. Records must therefore be retained for at least this period. In the event that a taxpayer fails to submit a VAT Return by the deadline, a penalty of €5 per day is charged. In the event that VAT due is not paid on time, interest at 0.54% per month is incurred.

Other taxes

Other indirect taxes charged in Malta are the following:

Customs and excise tax

Customs and excise duties apply to goods and services coming from outside the EU. These taxes are calculated as a sum of the value of the merchandise, its transportation and insurance costs. The duty rates for imports are variable and range between 0% and 17%. There are also anti-dumping duties that can reach 48.5%.

Stamp duty

Stamp duty is charged on the execution of dutiable documents in Malta. These include documents in relation to the transfer of immovable property and securities in Maltese companies, and insurance documents.

Eco Contribution tax

Eco Contribution tax is levied on certain products, which are deemed to be harmful to the environment. This tax is due by the producer of the goods at the time when these goods are placed on the market or brought into Malta (both imported and acquired from within the community) to be placed on the market in Malta. The rate of tax depends on the type of item.

Doing business in Malta

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