CHELCO
MANAGEMENT
SERVICES

MALTA Jurisdictional Guide

GENERAL INFORMATION

The Republic of Malta is situated in the centre of the Mediterranean, south of Sicily, east of Tunisia and north of Libya. Malta gained its independence from the United Kingdom in 1964 and became a Republic in 1974. Since 1964 it has been a member of the United Nations and in 2004 it joined the European Union (EU) as a full member. Malta is also party to the Schengen Agreement and in 2008 it became part of the Eurozone.

Malta’s strategic geographical location and EU membership plays a very important role in its economic, political and cultural development.

The island's increasing relevance as a corporate services and business centre is attributable to several factors.

The network of double taxation treaties to which Malta is signatory and the solid and comprehensive legislative framework which provides a sound basis for conducting business activities, particularly in the financial services, shipping and online gaming sectors, have contributed substantially to Malta's successful development as an international business centre.

With its English-speaking workforce and the competitive cost of professional services, Malta has become firmly established as a reputable business and financial centre offering attractive business solutions for individuals and international corporations alike.

COUNTRY INFORMATION

Population	418,000
Location	Mediterranean
Language	Maltese, English
Time zone	GMT+2
Currency	EURO (€)

CORPORATE INFORMATION

Basic Characteristics

Legal Form	Private Limited Liability Company
Legislation	Companies Act, 1995 – Civil Law
Regulatory Authority	Malta Financial Services Authority (MFSA)
Types of Companies	• Private Limited Liability Companies • Public Limited Liability Companies • Partnerships
Shelf Companies Available	No
Required Incorporation Documents	Certified copy of passport and copy of proof of address for beneficial owners and senior officers

COMPANY REQUIREMENTS

Company Name

Language	Latin Alphabet
Name Suffixes denoting Limited Liability	"Limited", "Ltd" for Private Limited companies & "p.l.c." in case of Public Limited Companies

Share Capital

Minimum Authorized Capital	€1,165
Permitted Currencies	Any
Minimum Issued Capital	€1,165 (20% of which must be paid up upon incorporation)
Classes of Shares permitted	A company may have different classes of shares
Bearer Shares	No

Directors

Minimum Number	One (physical or legal)
Local Director Required	No
Publicly Accessible Director Records	Yes
Location of Meetings	Anywhere

Shareholders	
Minimum Number	Two (physical or legal) – however "single member companies" may be registered subject to satisfaction of certain requirements.
Local Required	No
Publicly Accessible Records	Yes
Location of Meetings	Anywhere

Beneficial Owner	
Publicly accessible records	No (when authorised fiduciary is used)

Secretary	
Required	Yes (physical)
Local Required	No

Registered Office	
Required	Yes
Local Required	Malta

Accounts	
Required	Yes – to be prepared on the basis of the International Financial Reporting Standards (IFRS) or the General Accounting Principles for Smaller Entities (GAPS's)
Audit Required	Yes
Required to file accounts	Yes – with the Registrar of Companies
Annual Return Filing	Yes – with the Registrar of Companies
Annual Tax Return Filing	Yes – with the Commissioner of Inland Revenue

Government Fees	
Registration Fees	€245-€2,250 (depending on the amount of authorized capital)
Annual Return Filing Fees	€100-€1,400 (depending on the amount of authorized capital)
Annual Government Levy	€100

TAXATION

General

Corporate Tax Rate	Flat rate of 35%. Can be reduced to an effective rate of 0% - 5%. Tax paid by the company is credited in full to the shareholder upon distribution of profits within two weeks of submission of refund claim.
Withholding taxes	Not applicable on dividends, interest and royalties paid to non-residents

Full Imputation System

Malta operates the “full imputation” system of taxation so that any tax paid by the company is imputed to the shareholder in the event of a dividend distribution. The tax withheld by the company from the dividend it distributes is, therefore, no more than a payment on account of the shareholder’s own liability.

Tax Rates

Income tax is the only tax imposed on the profits of the Company. The standard corporate rate of income tax is fixed at 35% of taxable income, which is the net profit (accounting profits) as reported in the company’s’ audited financial statements, subject to certain adjustments. All expenses incurred wholly and exclusively in the production of the income are considered deductible for tax purposes.

The distribution profits of a company registered in Malta (which includes a Maltese branch of a foreign company) are required by tax law to be allocated to five different accounts, or reserves, namely:

- **The Immovable Property Account** consisting of a company’s distributable profits that have suffered tax and that are derived directly or indirectly from immovable property situated in Malta;

- **The Final Tax Account** to which certain exempt profits (such as profits derived from a participating holding) or profits which were subject to tax at source under a final withholding tax regime (such as investment income, certain property transfers and profits that have been relieved from tax under Malta’s incentive legislation) would be allocated;

- **The Foreign Income Account** consisting of a company’s distributable profits typically arising from overseas passive income, such as dividends, capital gains on disposal of shares and property, interest, royalties and similar income and rents. This account also however comprises profits of banks and financial institutions from investments, assets and liabilities situated outside Malta, profits of insurance companies on risks situated outside Malta, profits attributable to a permanent establishment situated outside Malta and dividends paid out of the Foreign Income Account of another company registered in Malta;

- **The Maltese Taxed Account** which comprises a company’s distributable profits from Maltese sources and includes profits on international trading activities;

  The Untaxed Account into which are allocated the amounts not allocated to the other four accounts. This is the only account which may have a negative amount allocated to it.

Double Taxation Relief

Malta generally operates an ordinary credit system for relieving double taxation. There are four different types of double taxation relief, namely:

- **Double Taxation Relief** in respect of tax charged in a country with which Malta has a double tax treaty. Generally, the tax payable by a person in the treaty country on income that is also subject to tax in Malta is allowed as an ordinary credit against that person's Maltese tax liability (subject to per source limitations).
- **Commonwealth Income Tax Relief** is a tax credit afforded to relieve double taxation where Commonwealth income tax has been paid on the same income that is subject to tax in Malta. In practice, this type of relief is rarely, if ever, used.
- **Unilateral Relief** is a system of relieving double taxation that operates in exactly the same way as double taxation relief. Tax payable by a person in a country with which Malta does not have a double tax treaty is allowed as an ordinary credit against the Malta tax payable on that income. Underlying tax suffered by the overseas company on the distributed profits may also be claimed as a credit insofar as the overseas company paying the dividend is owned, directly or indirectly, as to more than 10% by the Maltese company.
- **Flat rate foreign tax credit** is available to a Maltese company in respect of income allocated to its Foreign Income Account. This method of relieving double taxation is available if none of the other three systems applies. A Maltese company's income from overseas, net of any foreign tax, if any, is grossed up by 25% and after the deduction of any expenses, tax is chargeable at 35% of the resultant net profit. The amount by which the income is initially grossed up is allowed as a credit against the tax due.

Refunds to shareholders of tax paid by Maltese Companies

The payment of a dividend by a Maltese registered company to a shareholder entitles such shareholder to a full or partial refund of the tax paid by the Maltese company on the profits out of which the dividend was distributed.
A tax refund arises from the full imputation system of taxation referred to above. In addition, another entitlement to a tax refund arises on certain distributions made by Maltese companies, in certain circumstances as explained below:

- No entitlement to tax refunds arises on dividends paid from the company's profits allocated to the Final Tax Account or the Immovable Property Account;
- An entitlement to a refund of 6/7$^{\text{ths}}$ of the tax paid by the Maltese registered company arises when the dividend is paid from the company's Foreign Income Account or Maltese Taxed Account (thus reducing the combined overall Malta effective tax rate in respect of such profits to a maximum of 5%);
- An entitlement to a refund of 5/7$^{\text{ths}}$ of the tax paid by the Maltese registered company arises when the dividend is paid from the company's Foreign Income Account or Maltese Taxed Account where such dividends constitute the distribution of passive interest or royalties (thus reducing the combined overall Malta effective tax rate in respect to such profits to a maximum of 10%);
- An entitlement to a refund of 2/3$^{\text{rds}}$ of the Malta tax paid arises where the dividend is paid from the Maltese registered company's Foreign Income Account on which the company distributing the dividend has claimed relief of double taxation;
- An entitlement of a full (100%) refund of the tax paid by the Maltese registered company arises when the dividend is paid out of profits derived from a 'participating holding' or the disposal of such holding.

Participating Holdings and Participation Exemption

A company registered in Malta would have a 'participating holding' in a subsidiary company where the following conditions are satisfied:
The shares held by the Malta company in the subsidiary company qualify as 'equity shares' i.e. shares in a company which does not own immovable property situated in Malta (or rights over such property) and does not hold, directly or indirectly, shares or interests in a body of persons which owns immovable property situated in Malta (or rights over such property) and which entitle the shareholder to at least two of the following rights: (i) a right to votes; and/or (ii) a right to profits available for distribution; and/or (iii) a right to assets available for distribution in the event of a winding up; and

At least one of the 6 additional qualifying criteria are met:

- A minimum direct shareholding of 10% of the equity shares in the subsidiary, or
- A minimum equity investment of €1,164,000 in the subsidiary, held for an uninterrupted period of 6 months, or
- The right of the Malta company to, at its option, call for and acquire the balance of equity shares in the subsidiary not held thereby, or
- The entitlement of the Malta company to first refusal in the event of the proposed disposal, redemption or cancellation of the equity shares in the subsidiary not held by it, or
- Entitlement of the Malta company to sit on the board or appoint a person to sit on the board of the subsidiary as a director, or
- An equity shareholding in the subsidiary for the furtherance of the Malta company's own business and provided that the equity shares are not held as trading stock

Participation Exemption

The Participation exemption would always be available in respect of capital gains derived from a 'participating holding' - even upon a disposal of a participating holding (in whole or in part) in a Malta resident company.

On the other hand, the participating exemption would only be available in respect of dividends derived from a participating holding in a non-resident subsidiary and if any one of the following additional conditions is satisfied:

- The distributing company is resident or incorporated in a country or territory which forms part of the European Union; or
- It is subject to foreign tax at a rate of 15% or more; or
- It does not have more than 50% of its income derived from 'passive interest or royalties'.

Where none of the above three conditions are satisfied, then both of the following two conditions must be met to avail of the participation exemption:

- The equity holding in the non-resident subsidiary is not a portfolio investment and;
- The non-resident subsidiary is subject to any foreign tax at a rate which is not less than 5%.

Payment of tax and refunds

Tax is payable by a Maltese company on profits allocated to the Foreign Income Account and Maltese Taxed Account by not later than sixty days from the end of the month in which a dividend is paid. If no dividend is paid, tax is payable on profits allocated to the Foreign Income Account within eighteen months from the end of the accounting period.

A tax refund due from the Maltese revenue authorities is payable to the shareholders within 14 days from the end of the month in which a valid refund claim is submitted, provided the company has paid the tax on the distributed profits.

Withholding taxes

No tax is withheld on the payment of dividends by a Maltese registered company to its shareholders, whether such shareholders are resident or non-resident in Malta.

Non-resident persons are exempt from tax on interest or royalties accruing or derived from Malta except where such interest or royalties are derived from a permanent establishment that the non-resident has in Malta. As a result no withholding tax is levied on the payment of interest or royalties to non-residents.

VAT

Maltese companies trading from Malta may be registered for VAT purposes and the VAT prefix will be 'MT'.

Double Taxation Agreements

Malta has a large and expanding network of double tax agreements comprising 62 treaties in force to date. Malta's double tax treaty network as well as other domestic methods for relieving double taxation on cross border transactions, and Malta's full imputation system and its refundable tax credit system provide an excellent base for establishing tax efficient structures.

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NOTE:

The information contained in this publication is accurate as at the date of its publication and is not intended to be exhaustive nor a substitute for proper professional advice. Please contact our company for consultation. We look forward to assessing your individual business plans and requirements and recommending the right solution for your unique needs.