

Global Individual Tax Handbook 2010



Global Tax Series

Malta

This chapter is based on information available up to 10 March 2010.

Introduction

Individuals are subject to income tax. The Maltese income tax system has its origins in the former British system. The principal legislation on income tax is contained in the Income Tax Act of 1948 and the Income Tax Management Act of 1994, as subsequently amended.

Both employees and the self-employed must pay social security contributions. For VAT and miscellaneous indirect taxes, see Corporate Taxation, 8. and 9., respectively.

From 1 May 2004, Malta is a Member State of the European Union. Important features of the Maltese tax system have been harmonized with EU tax law.

With effect from 1 January 2008, the currency is the euro (EUR).

1. Income Tax

1.1. Taxable persons

The tax liability of individuals depends on their residence, ordinary residence and domicile. There is also a category of temporarily resident persons. For the scope of tax liability, see 1.2.1. For expatriates, see 6.2.

Individuals are *resident* in Malta if they permanently reside in Malta, except for such temporary absences that seem reasonable to the Commissioner of Inland Revenue and which are not inconsistent with the claim of such individuals to be resident in Malta.

The terms *ordinary residence* and *domicile* are not defined under Maltese law. Consequently, they have the meanings assigned to them in general English law (see United Kingdom, Individual Taxation, 1.1.). In practice, settlers who are not of Maltese origin and who do not intend to permanently establish themselves in Malta are not considered to be domiciled in Malta for tax purposes.

Individuals are *temporarily resident* in Malta if:

- their stay in Malta is for temporary purposes only; and
- they have no intention of establishing residence in Malta; and
- they do not actually reside in Malta for an aggregate period of 6 months or more in a year.

A joint tax return must be filed for husband and wife. Spouses are jointly liable for taxes due, but for administrative purposes, tax is charged on the spouse who has been elected by the couple as the responsible spouse. In the absence of such an election, the matter is decided

by the tax administration. The responsible spouse may elect that the earned income, pension or annuity of the other spouse be computed separately, but the tax computed separately is also charged on the responsible spouse.

Partnerships – other than the partnership *en commandite*, the capital of which is divided into shares, and the partnership *anonyme* – are transparent for tax purposes. Each partner is assessable individually in respect of his share of the partnership income.

1.2. Taxable income

1.2.1. General

Persons who are ordinarily resident and domiciled in Malta are subject to income tax in Malta on their worldwide income and certain capital gains. Persons who are either not ordinarily resident in Malta or are not domiciled in Malta are subject to Maltese income tax on their income arising in Malta and on their foreign income (but not foreign capital gains) that is received in Malta.

Individuals temporarily resident in Malta do not pay tax on the income or capital gains arising outside Malta, whether remitted or not.

All gains or profits derived from the following sources are subject to income tax:

- trade or business;
- profession or vocation;
- employment or office;
- dividends, interests or discounts;
- pensions, annuities or annual payments;
- rents, royalties, premiums and any other profits arising from property;
- certain capital gains; and
- other gains or profits.

In general, income from the above sources is aggregated. The resulting taxable income less any personal deductions (see 1.7.1.) will be subject to tax at the applicable tax rates (see 1.9.1.). The exception to this general rule is rental income (see 1.5.3.).

1.2.2. Exempt income

The exemptions granted include:

- certain capital gains (see 1.6.);
- certain pensions (see 1.3.3.);
- scholarships; and
- child maintenance.

1.3. *Employment income*

1.3.1. *Salary*

Income tax is chargeable in respect of gains or profits from any employment or office, including the estimated annual value of any quarters or board or residence.

In the context of employment income, expenses are deductible only to the extent that they are wholly, exclusively and necessarily incurred in the performance of the duties of the employment or office. Such a case would arise, for example, where an employed salesman must use his own car in the course of his employment. The necessity for the expense has to be dictated by the employment itself and not by the employer.

1.3.2. *Benefits in kind*

Fringe benefits payable to employees are taxable together with other employment income. Fringe benefits are broadly divided into three categories, namely provision of company cars and/or cash allowances for the use of private cars, provision of other assets (including accommodation) and provision of other benefits.

1.3.3. *Pension income*

Pension income is subject to income tax at normal rates and, if it arises from Maltese sources, tax is withheld at source under the Final Settlement System (FSS) (see 1.9.2.).

War disability pensions and war widows' pensions are exempt. Any capital sum received by commutation of pension is exempt from tax.

1.3.4. *Directors' remuneration*

Directors' remuneration is taxed as employment income.

1.4. *Business and professional income*

The rules relating to income derived from a trade, business, profession or vocation and the deduction of expenses incurred in the production of such income are the same for individuals as they are for companies (see Corporate Taxation, 1.3.).

1.5. *Investment income*

1.5.1. *Dividends*

In general, Malta operates a full imputation system under which dividends paid by a resident company carry a tax credit equivalent to the tax paid by the company on its profits out of which the dividends are distributed. Shareholders are taxed on the gross dividend at the applicable tax rates, but are entitled to deduct the tax credit attaching to the dividend against their total income tax liability. This tax may be treated as a final tax at the taxpayer's option.

Profits distributed to a resident individual shareholder out of the untaxed income (see Corporate Taxation, 1.1.)

are subject to a 15% withholding tax. The shareholder can opt to declare the dividends in the tax return, so that the dividends are taxed at the ordinary rates and a credit for the withholding tax is granted.

Resident companies can distribute bonus shares from profits, whether of an income or capital nature, and from share premium or capital redemption reserves. If bonus shares consist of profits capitalization, they are deemed to be dividends for tax purposes. Such bonus shares consisting of profits capitalization are taxable in the recipient's hands gross of any tax paid at the corporate level on the relevant profits, but a tax credit equivalent to the gross-up is available to the shareholder.

1.5.2. *Interest*

Interest paid by Maltese banks, the government of Malta and public corporations and authorities, as well as certain types of discount and premium may be subject to a final withholding tax of 15%, in which case the income will not be reported in the tax return. Alternatively, the recipient of this investment income may elect to receive the income without deduction of tax, in which case the income will need to be declared in the tax return and be subject to income tax in the ordinary way.

These provisions do not apply to non-residents.

1.5.3. *Other*

Unless the letting of immovable property is deemed to constitute a business (e.g. when self-catering flats are hired on a short-term basis to tourists), rental income is treated as investment income. Only the following deductions are allowed from such income:

- any rent, ground rent or similar burden payable;
- the amount of interest for sums borrowed;
- the licence fee paid in terms of the Malta Travel and Tourism Services Act; and
- a further allowance computed at 20% of the rental income remaining after deducting from the gross rent the relevant ground rent and licence fee.

Where a person rents immovable property to the Housing Authority for a period of 10 years or more, the gross rental income is subject to a final withholding tax at a rate of 5%; this tax is not refunded or credited against the tax liability on any other source of income.

1.6. *Capital gains*

Income tax is imposed on capital gains derived from the transfer of ownership of certain assets by individuals in the same manner as is applicable for companies (see Corporate Taxation, 1.4.).

Of particular interest to individuals is the fact that tax on capital gains does not apply to immovable property that has been owned and occupied for a period of at least 3 years as the transferor's own residence immediately preceding the date of transfer and provided that the property is disposed of within 12 months of vacating the premises.

Capital gains realized on the disposal of shares or units in a Maltese-licensed collective investment scheme

investing more than 15% of its total investments in foreign-based securities may be subject to a final withholding tax of 10% or 15%, in which case the income will not be reported in the tax return. Alternatively, the recipient of this capital gain may elect to receive the gain without deduction of tax, in which case the gain will need to be declared in the tax return and be subject to income tax in the ordinary way.

Exempt capital gains include those on securities listed on the Malta Stock Exchange, other than securities in a collective investment scheme held in a fund investing less than 85% of its total investments in Malta-based securities.

Rollover relief is granted in respect of the replacement of business assets, subject to certain conditions.

Transfers of immovable property situated in Malta are subject to a 12% withholding tax on the transfer value. Various exceptions to this rule are applicable, e.g. where the transfer is made within 5 years after the acquisition, in which case the transferor has the option to be charged to tax at the said 12% or in accordance with the general rules.

1.7. Personal deductions, allowances and credits

1.7.1. Deductions

Interest paid on borrowed money is deductible from income generated by that same money. Interest paid on a loan made in order to purchase a dwelling is not deductible.

When a person pays emoluments to his or her spouse, such emoluments are allowable as a deduction against income, subject to the satisfaction of a number of conditions. Alimony paid as determined by the courts of Malta or as agreed by a public deed of personal separation under the authority of the courts of Malta is deductible up to the amount of taxable income. (Divorce is not granted in Malta.)

Payments of up to EUR 9,320 annually to a school in respect of the services of a facilitator of a child with special needs are allowed as a deduction against the income of the parent. School fees of up to EUR 1,400 annually per child in the case of a secondary school and up to EUR 1,000 annually per child in the case of a primary school or kindergarten, or a licensed or registered childcare centre are deductible against the income of the parent.

Payments for sporting activities organized by a person registered under the Sport Persons (Registration) Regulations or by the Malta Sports Council in respect of a child under 16 years of age up to EUR 100 annually per child are deductible against the income of the parent.

Payments to private homes on behalf of an elderly family member of up to EUR 2,000 are deductible against the income of the individual making the payment.

1.7.2. Allowances

No personal allowances are granted.

1.7.3. Credits

A tax credit is granted to married or single women who return to employment, provided certain conditions are satisfied.

1.8. Losses

Trade losses may be set off against other income of the same year and thereafter carried forward indefinitely and set off against the income for succeeding years. Losses due to depreciation, however, may only be carried forward indefinitely and set off against the profits of the same and continuing trade. No carry-back of losses is allowed.

Capital losses may be set off only against capital gains. The set-off is allowed against capital gains of the current and following years.

1.9. Rates

1.9.1. Income and capital gains

With effect from 1 January 2009, the rates for married couples are:

Taxable income (EUR)	Rate (%)
up to 11,900	0
11,901 – 21,200	15
21,201 – 28,700	25
28,701 and over	35

With effect from 1 January 2009, the rates for other individuals resident in Malta including married couples opting for a separate computation with regard to their employment and/or trading income and/or any pension received are:

Taxable income (EUR)	Rate (%)
up to 8,500	0
8,501 – 14,500	15
14,501 – 19,500	25
19,501 and over	35

1.9.2. Withholding taxes

Income tax is withheld from salaries under the Final Settlement System (FSS). FSS works by averaging the effective rate of tax chargeable on the employee and applying that rate to the weekly/monthly salary. The amount so deducted should be equal to the actual tax chargeable on the individual.

Income from part-time work up to EUR 7,000 annually may be subject to a final withholding tax of 15%. Qualifying part-time workers are not required to declare their income from part-time work in their income tax return. The 15% withholding tax may, at the taxpayer's option, be treated as a final tax. Disclosure of income

from part-time work in the tax return is only beneficial where the taxpayer is taxable below the marginal rate of 15%. In that case, the declaration of such income will result in a tax refund.

A 15% withholding tax is imposed on certain types of investment income (e.g. bank interest paid to Maltese residents). For investment income, see 1.5.

For the withholding tax on transfers of immovable property, see 1.6. For withholding tax on dividends, see 1.5.1.

1.10. Administration

1.10.1. Taxable period

Individuals are subject to tax on income arising in a calendar year (the basis year). Such income is assessed to tax in the year following the year in which it arises (i.e. the year of assessment). For example, the income for the year ending on 31 December 2009 is assessable to income tax in 2010.

1.10.2. Tax returns and assessment

Spouses are jointly responsible for filing tax returns and they must declare which of them is to be registered as taxpayer. The responsible spouse can opt to have tax on the other spouse's income computed separately. Any income of the non-responsible spouse is assessable in the hands of the responsible one. If a separate computation is adopted, the spouses are assessed at the rates for single taxpayers (see 1.9.1.).

1.10.3. Payment of tax

In respect of income that has not suffered tax at source, individuals must make three provisional tax payments that have to be effected by not later than 30 April, 31 August and 21 December of each basis year (see 1.10.1.). The balance must be paid by 30 June in the year of assessment.

2. Other Taxes on Income

There are no other taxes on income.

3. Social Security Contributions

Social security contributions are payable by the employee at the rate of 10% of the weekly basic wages up to a maximum contribution of EUR 32.91 per week. The contribution is deducted from the wages by the employer who then adds an equivalent amount as his contribution and pays the whole sum to the government on a monthly basis, along with FSS income tax deductions (see 1.9.2.).

Self-employed persons pay social security contributions at 15% of their net income received from a trade, business or profession during the previous year. The weekly contributions range from a minimum of EUR 26.37 to a maximum of EUR 49.37.

Social security contributions are not deductible for income tax purposes.

4. Taxes on Capital

4.1. Net wealth tax

There is no net wealth tax.

4.2. Real estate tax

There is no real estate tax.

5. Inheritance and Gift Taxes

There are no inheritance and gift taxes.

6. International Aspects

6.1. Resident individuals

6.1.1. Foreign income and capital

Persons who are ordinarily resident and domiciled in Malta (see 1.1.) are subject to income tax in Malta on their worldwide income and certain capital gains. Persons who are either not ordinarily resident in Malta or not domiciled in Malta are subject to Maltese income tax on their income and capital gains arising in Malta and on their foreign income (but not foreign capital gains) that is received in Malta. Individuals temporarily resident in Malta do not pay tax on the income or capital gains arising outside Malta, whether remitted or not.

Losses arising outside Malta are allowed as a deduction if the losses, had they been profits, would have been taxable in Malta.

6.1.2. Double taxation relief

In respect of individuals, the legislation provides for three types of relief from double taxation of foreign-source income, i.e. treaty relief, Commonwealth relief and unilateral relief.

The treaty relief takes the form of a tax credit granted for foreign tax paid on income received from a country with which Malta has signed a tax treaty and which treaty makes provision for double taxation relief. The amount of the credit is the lower of Maltese tax on the foreign income and the foreign tax paid. For Malta's treaty network, see the withholding tax rates chart in the Appendix.

The Commonwealth relief is a limited form of double taxation relief granted for taxes paid to British Commonwealth countries in respect of income received from such countries that provide a similar relief to Maltese-source income.

The unilateral relief works very much in the same way as the treaty relief except that it only applies where treaty relief is not available. With effect from 1 January 2007, this relief has been widened so as to allow indivi-

duals in receipt of inbound foreign dividends to claim relief not only for the withholding tax and other direct taxes imposed on them as shareholders, but also for the corporate income tax (underlying tax) paid by the non-resident distributing company on the profits from which the dividend is paid.

6.2. Expatriate individuals

6.2.1. Inward expatriates

Inward expatriates are taxed on income and certain capital gains arising in Malta, which includes remuneration for services performed in Malta, and on income arising abroad which is received in or remitted to Malta. If a tax treaty is in force, the provisions of the treaty apply. In general, Malta's tax treaties follow the OECD Model and, therefore, income from employment is taxable in Malta if any one of the following three conditions is satisfied:

- the employee is present in Malta for a period or periods exceeding in the aggregate 183 days during any 12-month period/calendar year; or
- the remuneration is paid by, or on behalf of, an employer who is resident of Malta; or
- the remuneration is borne by the employer's permanent establishment or fixed place of business in Malta.

Employees who are resident in a country with which Malta does not have a tax treaty are subject to tax in Malta on income that they receive for work done in Malta even if they work in Malta for only one day. Where the remuneration is subject to Maltese tax, the employer is obliged to deduct tax at source under the FSS (see 1.9.2.).

Expatriates who render investment or insurance services are generally exempt for 10 years from income tax on specified fringe benefits, interest and royalties.

Individuals taking up residence in Malta on the strength of a Permanent Residence Permit issued in terms of Malta's immigration laws are subject to tax at a flat rate of 15% on income received in or remitted to Malta (subject to a minimum tax liability of EUR 4,193 after taking into consideration double taxation relief that may be applicable). The permit is granted on request if certain conditions are fulfilled.

6.2.2. Outward expatriates

Where employees are required by their contract of service to perform work or duties mainly outside Malta, excluding any services on board a Maltese ship or aircraft and any service for the government of Malta, such income is deemed to constitute the last part of that individual's total income and taxed at the rate of 15%,

unless the employee opts to be taxed at the normal rates.

6.3. Non-resident individuals

For the concept of residence, see 1.1.

6.3.1. Taxes on income and capital gains

Non-resident individuals are generally subject to Maltese income tax on their income and capital gains arising in Malta.

Non-resident individuals who are subject to tax in Malta are charged at the following rates, which apply to income from all sources:

Taxable income (EUR)	Rate (%)
up to 700	0
701 – 3,100	20
3,101 – 7,800	30
7,801 and over	35

Where taxable income (e.g. rents and income of a permanent establishment), other than dividends, interest and royalties (see below) is paid to non-resident individuals, tax must be deducted at source and paid to the Inland Revenue within 30 days. In the case of a non-resident individual, the rate is 25%. Any tax so deducted is credited to the taxpayer in full against his final tax liability for that period.

As Malta generally operates a full imputation tax system (see Corporate Taxation, 1.1.) for residents and non-residents alike, no further tax is suffered on dividends received from companies that are tax resident in Malta. Furthermore, distributions from untaxed income to non-resident shareholders are also not taxable.

Interest and royalties paid to non-residents are exempt from tax in Malta if they are not effectively connected to a permanent establishment in Malta through which the non-residents are engaged in a trade or business.

Non-residents are exempt from tax on any capital gains derived from the disposal of shares in a Maltese resident company the assets of which do not consist wholly or principally of immovable property situated in Malta.

6.3.2. Taxes on capital

There is no net worth or real estate tax.

6.3.3. Inheritance and gift taxes

There are no inheritance and gift taxes.