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Malta - March 2009

An alternative financial centre

Malta: Regulatory Framework

The framework

Malta: Regulatory Framework

Primary Legislation

- Banking Act
- Financial Institutions Act
- Insurance Business Act
- Insurance Intermediaries Act
- Investment Services Act
- Special Funds Act [Retirement Pensions Act]
- Trustees and Trusts Act
- Malta Financial Services Authority Act
- Central Bank of Malta Act

Malta: Regulatory Framework

Supporting Legislation

- Companies (includes Limited Partnerships) Act
- Netting upon Insolvency Act
- Securitisation Act
- Prevention of Financial Market Abuse Act
- Professional Secrecy Act
- Prevention of Money Laundering Act

Malta: Regulatory Framework

The Malta Financial Services Authority (MFSA) is the single regulator for financial services

- Regulates banking, financial institutions, insurance companies, investment services companies, securities, stock exchanges and listing, trust management companies, pension schemes
- Autonomous public institution, self-funded

Avoidance of Prescriptive Regulation to allow promoters the flexibility to operate

Malta: Regulatory Framework

Houses the Financial Intelligence Analysis Unit

- Money laundering regulations:
 - Identification procedures
 - Internal reporting procedures
 - Record keeping procedures
 - Staff training procedures
- Requirements:
 - Evidence of identification
 - Due diligence declarations
 - Notification of change of circumstances

Malta: International conformity & recognition

- FATF – Financial Action Task Force (1999)
- OECD – Organisation for Economic Co-operation and Development (2000)
- Council of Europe Money Laundering Committee (2001)
- EU Peer Review (2002)
- International Monetary Fund – full FSAP (2003)
- IMF Biennial Internal Audit

Malta: Credits

- *“Malta embraces international tax standards for transparency and exchange of information and has joined OECD member countries in committing to eliminate harmful tax practices.”*
(OECD Official News Release, June 2000)
- *“ level of compliance with the FATF 40 + 9 recommendations found to be of a generally high standard with a compliant and largely compliant rating being given in respect of the majority of recommendations.*
(*“Third Round Detailed Assessment Report on Malta” Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures MONEYVAL, November, 2007)*
- *“Malta’s financial system appears to be healthy and well supervised Malta has a comprehensive legal framework and strongly adheres to most of the international standards and codes.... The authorities have undertaken major efforts in strengthening the supervisory framework”*
(*International Monetary Fund, Financial System Stability Assessment (FSSA), September 2003*)

Malta - March 2009

Insurance and Reinsurance Business

Malta: Insurance and reinsurance

- transposes the European Union Insurance and Reinsurance rules and provides for passporting of services and freedom of establishment in line with the EU single market concept;
- reflects Malta's international commitments, in particular the WTO and provides a procedure for exchange of information between the MFSA and foreign insurance regulatory authorities, other local or overseas regulatory, judicial or enforcement authorities;
- legislation creates a favorable regulatory and competitive environment particularly in potential growth areas such as affiliated (captive) insurance and insurance management companies operating carrying out international business.

Malta: Regulatory Framework

Protected Cell Companies

- Only EU country with PCC legislation
- Modeled to a large extent on the provisions of the Guernsey Protected Cell Companies Ordinance, 1997;
- Protected Cell Company provisions also apply to all insurance companies, insurance managers and insurance brokers;

Key features:

- Segregation of Cellular Assets and Liabilities from Core and other Cells;
- Lower capital requirements for Cells as they share test with the Core and Cells;
- Minimum Own Funds requirements apply to the PCC as a whole not the Cell;
- Adequate solvency margin must be maintained by each Cell;
- 'Secondary recourse' to Core capital in case of insolvency of a Cell;
- Cellular Assets may be transferred to another PCC with MFSA approval.

Malta: Best developing domiciles

Quality	Winner	Highly Commended	Also Mentioned
Tailored Regulation	South Carolina	Malta	Nevada Hawaii Gibraltar
Accessibility	South Carolina	Malta	New York Hawaii Gibraltar
Cost	Malta	South Carolina	Nevada Hawaii

Source: Reactions Research 2006

Malta: Double Tax Treaties

EU Countries		Other European Countries	Rest of the World	
Austria	Latvia	Albania	Australia	Pakistan
Belgium	Lithuania	Croatia	Barbados	Singapore
Bulgaria	Luxembourg	Iceland	Canada	S. Africa
Cyprus	Netherlands	Norway	China	Syria
Czech Rep.	Poland	San Marino	Egypt	Tunisia
Denmark	Portugal	Switzerland	India	U.S.
Estonia	Romania		S.Korea	
Finland	Slovakia		Kuwait	
France	Slovenia		Lebanon	
Germany	Spain		Libya	
Hungary	Sweden		Malaysia	
Italy	UK		Morocco	

Malta - March 2009

The Company Tax System in Malta

Malta - The Company Tax System

1. Companies are subject to tax at 35%.
1. Income from all sources, including capital gains is aggregated for the purposes of tax.
2. Tax is ultimately borne by shareholder depending on his tax status, since Malta's tax system adopts a full imputation system.
3. Effective system for relief of double taxation.
4. Compliant with EU law.

Malta: Corporate vehicles

- Taxed corporate vehicles:
 - Limited liability companies
 - Plc (public)
 - Ltd (private)
 - Partnership *en commandite*, the capital of which is divided into shares.
 - Taxed at 35%
 - Foreign branches in Malta treated as local companies for tax purposes.
 - Annual audit/accounts to be IFRS compliant.
 - Share capital may be effected in any foreign convertible currency (company's reporting currency).
 - Tax is payable in the company's reporting currency.
 - Any applicable refund of tax is made in the company's reporting currency.

Malta: Full Imputation System

- Definition: shareholders receive full credit for any tax paid by the company on profits distributed as dividends, thereby avoiding double taxation.
- Excess imputation tax credits are refundable where the shareholder is liable to tax in Malta on the dividend at a rate which is lower than the company rate of tax (ie. 35%).
- Tax due by company (Advanced Company Income Tax) on the earlier of:
 - 18 months from year end (subject to certain conditions), or
 - within stipulated time frame following the payment of a dividend.

Malta: Full Imputation System

<u>Taxation of Company XYZ Ltd.</u>	€
Chargeable Income	100
Tax @ 35%	35
Profit after taxation available for distribution	65
<u>Taxation of the shareholder receiving dividend</u>	€
Gross Dividend	100
Tax deducted by XYZ Ltd.	35
Net dividend	65

Malta Effective System for Relief of Double Taxation

- Unilateral relief, including credit system for relief of underlying tax.
- OECD-based Tax Treaty Network.
- EU Parent-Subsidiary Directive.
- EU Interest & Royalties Directive.
- Participation Exemption.

Malta : Unilateral Relief

- Allowed in cases where foreign tax is suffered on income received from a country with which Malta has no tax treaty.
- The foreign tax suffered is allowed as a credit against the tax chargeable in Malta on the gross chargeable income.
- Credit shall not exceed the total tax liability in Malta on the foreign sourced income.
- When claiming unilateral relief, the taxpayer must provide evidence to IR
 - that the Income arose overseas
 - that the Income suffered foreign tax; and
 - the amount of foreign tax suffered.

Malta: Participating Holding (PH)

A PH arises where the Malta Company:

- Holds > 10% of the equity shares of a foreign company; or
- Holds at least 1 equity share in said foreign company and has an option over the balance; or
- Holds at least 1 equity share in said foreign company and has a right of first refusal over the balance; or
- Holds at least 1 equity share in said foreign company and has the power to appoint a director; or
- Has an equity shareholding in said foreign company of at least €1.165m which has been held for an uninterrupted period of at least 183 days; or
- Holds equity shares in said foreign company in furtherance of its business provided that it is not held as trading stock.

Participating Holding (PH)- Exemption

- At the option of the taxpayer, dividends and capital gains derived from a PH are exempt from Malta tax.
- If the PH is acquired after 01/01/2007, the foreign Company must:
 - be resident or incorporated in an EU country or territory; OR
 - be subject to any foreign tax of at least 15%; OR
 - not have more than 50% of its income derived from passive interest or royalties.

Where none of the conditions set out above are satisfied then both of the following two conditions must be satisfied for the income to be eligible for the participation exemption :

- 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 50% of its income from portfolio investments shall be deemed to be a portfolio investment; AND
- 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 5%.

Compliant with EU law- Outline 2007 Reform

- Extension of Malta tax refund system to dividends derived by all persons from all sources with the exception of profits derived from immovable property situated in Malta.
- Phasing out of the International Trading Company regime.
- Extension of Malta tax refund system to the shareholders of companies having a Malta branch.
- Introduction of Participation Exemption.

How it works ...

A practical example

At shareholder level of Maltese company

(Illustrative example – XYZ Limited cont.)

	Participating Holdings		Other income	
	Res Coy	N/R person	Res Coy	N/R person
Net dividend received	650	650	650	650
Grossed up dividend	1000	1000	1000	1000
Tax at source	350	350	350	350
ACIT Refund 100% - Part. Holding	350	350	-	-
ACIT Refund other income - 6/7	-	-	300	300
ACIT Refund passive income - 5/7	250	250	250	250

Imputation credit to shareholder

Effective combined level of taxation of corporate profits in Malta

Part. Holding	0	0		
Other income			50	50
Passive income	100	100	100	100
<i>Final effective tax rate on other income</i>			<i>5%</i>	<i>5%</i>
<i>Final effective tax rate on passive income</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>

Malta – indicative refund timelines

Company formed	01.01.08
Shareholder registered for refunds	01.01.08
Income received	30.06.08
Accounting year closes	31.12.08
Audit concluded	15.03.09
Dividend paid	31.03.09
Tax paid by company	31.03.09

Refund received by shareholder	14.04.09
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Malta - other key tax points

- No withholding taxes on interest and royalties to non-residents.
- No withholding tax on dividend payments.
- Group relief system.
- Possible to migrate companies to and from Malta.
- No capital duties or wealth taxes – maximum company registration fees €1,753.

Malta: Company Law

- Basis of Company/partnership and contract law.
- Choice of accounting year-end.
- Variable share capital companies (SICAVS).
- Defined capital reduction rules.
- Relative ease of incorporation for non-regulated entities.
- Low minimum capital requirements.
- Low registration and maintenance costs.
- Audited accounts must be prepared in accordance with IFRS and filed for public inspection.

Relevant Links:

- www.iimconsultants.com
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- www.ifsp.org.mt
- www.ird.gov.mt
- www.mfsa.com.mt
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