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The International Comparative Legal Guide to:

Corporate Tax 2018

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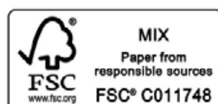

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Malta

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1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

Malta has an extensive treaty network with well over 60 income tax treaties in force and a few other treaties that are in the pipeline awaiting signature, ratification or both. Malta's tax treaties are not only with European countries but also with countries in North America, Latin America, Africa, the Middle East and Asia. Moreover, as a Member of the European Union, dividends, interest and royalties may also benefit from the EU Parent Subsidiary Directive or the Interest and Royalties Directive.

Apart from treaty relief, Malta also gives double taxation relief through legislative provisions in the form of unilateral relief or a Flat Rate Foreign Tax Credit (FRFTC) on foreign source income and capital gains.

There is relief from double taxation on a unilateral basis where tax is charged in a country with which Malta does not have a double tax treaty. Unilateral relief may also be claimed in respect of any underlying tax. The overseas tax is allowed as a credit against the Malta tax up to a level which does not exceed the total tax charge in Malta.

The FRFTC is available to entities in receipt of income or capital gains from overseas and is therefore allocated, for income tax purposes, to the Foreign Income Account (FIA). A certificate from an auditor, stating that the income stands to be allocated to the FIA, is sufficient to claim FRFTC and no proof is necessary as to any foreign taxes paid or suffered.

The FRFTC is calculated at 25% of the amount of the net overseas income or gain received by the Maltese company before any allowable expenses. The income plus the credit, less allowable expenses, is subject to income tax at the standard rate of 35%, with relief for the deemed credit up to a maximum of 85% of the Malta tax payable. Upon a distribution of profits, the shareholders are entitled to tax credits and tax refunds, and this system results in an effective tax rate of 6.25% or less.

1.2 Do they generally follow the OECD Model Convention or another model?

Malta's double tax treaties are mainly based on the OECD Model Convention. Some of the treaties contain a tax-sparing provision which makes the treaty even more attractive. In all tax treaties, the dividends article caters for Malta's full imputation system of taxation.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

A treaty needs to be incorporated into domestic law. Treaties are given force of law by means of publication in the Government Gazette as a legal notice under the Income Tax Act. A treaty will enter into force and have effect from the date determined by the treaty.

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation on benefits" articles)?

Very few treaties have an article on Limitation of Benefits (LOB), although protocols often exclude persons who are entitled to a special tax regime, such as offshore companies, Freeport companies and shipping companies registered under the Merchant Shipping Act. Most of these companies are now defunct.

The tax treaty with the United States of America contains a detailed LOB clause.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

The Income Tax Act provides that once a tax treaty enters into force, this shall have effect in relation to income tax notwithstanding anything in the Act or any other enactment. Therefore, should there be a conflict between a treaty provision and domestic legislation, it is the treaty which prevails.

Needless to say, if the treaty provision is less attractive than the normal provisions contained in the Income Tax Act then the latter prevails. A classic example is withholding taxes, since Malta does not impose any withholding tax on dividends, interest and royalties.

The only limitation is that treaties made after 1 October 1968 do not apply with respect to income tax upon the chargeable income of any person engaged in the production of petroleum produced in Malta.

1.6 What is the test in domestic law for determining the residence of a company?

Companies incorporated under the laws of Malta are deemed to be resident and domiciled in Malta, irrespective of the place of management and control. On the other hand, companies not incorporated in Malta are deemed to be tax-resident in Malta if the company is effectively managed and controlled from Malta. The

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Maltese tax legislation does not contain any specific provisions to determine the place of effective management and control. However, the Inland Revenue Department usually looks where the board meetings are held, its composition and the decisions taken, and at the level of substance in Malta.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

Malta levies a stamp duty which is known as a 'duty on documents and transfers'. This is payable on transfers of immovable property situated in Malta, certain marketable securities, insurance contracts and certain other transactions.

Duty on the acquisition of immovable property is levied at 5% (with some exemptions in instances where the property is being bought as the individual's sole ordinary residence). Stamp duty on share transfers (which do not hold any property) is 2%, but transfers of shares in Collective Investment Schemes (funds) and companies which have more than 50% of shares owned or controlled by non-resident persons are exempt from duty.

No duty is chargeable on the transfer of securities which are affected through a local bank or through a person holding a licence under the Investment Services Act. Hence transfers of listed securities, which have to be transferred through a licensed person, are consequently exempt from duty. Certain exemptions from stamp duty are also provided on certain share transfers made upon the restructuring of a shareholding that occurs through mergers, demergers, amalgamation and reorganisation within a group of companies.

There is no succession duty or inheritance tax in Malta, except that duty is levied on *causa mortis* transfers of immovable property or securities in Maltese companies (provided they do not fall within the exemptions referred to above).

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

Malta's VAT legislation is based on the EU Directives and therefore similar to the VAT system in other EU Member States. However, Malta has negotiated some special arrangements. The standard rate of VAT is 18% and applies to any supply of goods and services which is not exempt or subject to the reduced rate of either 5% or 7%.

The reduced rate of 5% applies to the supply of electricity, confectionery, medical accessories, printed matter, items for use by disabled persons, and works of art; whereas the reduced rate of 7% applies to accommodation which is licensed under the Malta Travel and Tourism Services Act.

Goods and services may also be 'exempt with credit' or 'exempt without credit'. 'Exempt with credit' is similar to having a zero VAT rate and applies on exports, pharmaceutical goods and food. 'Exempt without credit' applies to immovable property, insurance, banking, broadcasting and education.

Where supplies are either taxable or 'exempt with credit', input VAT is fully recoverable (unless specifically blocked), but where supplies are 'exempt without credit', VAT is neither charged nor recoverable by the supplier.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

Malta applied the EU Sixth Directive but also negotiated certain special arrangements. Exclusions from VAT are also provided for. A derogation obtained during accession negotiations (and subsequently confirmed by the EU) enables Malta to have exemption with credit status on food, pharmaceutical products, inland passenger transport, international passenger transport and domestic inter-island sea passenger transport. The supply of water by public authorities and the supply of buildings and building land are also exempt without credit.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

Input tax is only recoverable by a taxable person (a person who is, or is required to be, registered for VAT). Input tax is attributed in accordance with the nature and the tax status of the supply intended to be made by the business. Input tax on supplies wholly used to make taxable supplies is deductible in full. Input tax wholly used to make exempt or non-business supplies is not deductible. Where a person makes both taxable and 'exempt without credit' supplies, and incurs expenditure that is not directly attributable to either, the VAT on the expenditure must be apportioned between the supplies (under the partial attribution provisions).

Small undertakings with a turnover below the established threshold may opt for 'exempt without credit' status. Such entities or individuals will not recover input VAT.

Input tax on tobacco and tobacco products, alcoholic beverages, works of art, motor vehicles, entertainment and some other items is not recoverable.

2.5 Does your jurisdiction permit "establishment only" VAT grouping, such as that applied by Sweden in the *Skandia* case?

During the last budget, the Ministry of Finance announced the introduction of VAT grouping; however, no legislation has yet been introduced in this respect. Thus, the Maltese VAT legislation does not provide for VAT grouping and therefore the Skandia case has limited impact, if any, on Malta.

2.6 Are there any other transaction taxes payable by companies?

Customs duties are levied on certain imports from non-EU countries. Excise duties are levied on particular classes of goods such as alcohol and tobacco.

2.7 Are there any other indirect taxes of which we should be aware?

There are no further taxes applicable to businesses and corporate entities.

Malta has not adopted the Financial Transaction Tax (FTT).

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

There is no withholding tax on dividends, irrespective of the shareholder's country of residence and/or tax status. Malta has a full imputation system of taxation on dividend distributions out of profits allocated to the Foreign Income Account, the Maltese Taxed

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Account and the Immovable Property Account. Any tax paid by the company is credited in full to the shareholder upon a distribution of such profits.

The income tax rate applicable to companies is 35% and the highest personal tax rate is also 35%. If a shareholder is not subject to tax or qualifies for a lower rate of tax than the 35% already paid by the company, then he is entitled to a tax refund equivalent to the excess tax paid by the company. This system avoids any double taxation of distributed corporate profits.

Moreover, the income tax system utilises five different tax accounts, namely the Maltese Taxed Account (MTA), the Foreign Income Account (FIA), the Final Tax Account (FTA), the Immovable Property Account (IPA) and the Untaxed Account (UA). A distribution from the MTA or the FIA entitles shareholders to claim a tax refund equivalent to 6/7ths, 5/7ths or even 100% of the tax paid by the distributing company (depending on the type of income). A distribution from the FIA entitles the shareholder to claim a tax refund, equivalent to 100% of the tax paid by the company, or else to 2/3rds of the tax paid. As a result of these tax refunds, the overall effective tax rate may be reduced to 5% or lower, and in some cases any tax leakage may also be eliminated completely.

Distributions to a non-resident person from the FTA, IPA and UA are not subject to any withholding tax, and no tax refunds may be claimed in respect of such dividend distributions.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Royalties arising in Malta and accruing to a non-resident person are exempt from any tax in Malta, provided such royalties are not related to a permanent establishment which the said person may have in Malta.

Malta does not impose any withholding tax, irrespective of the recipient's tax status and the country of residence.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Interest arising in Malta and accruing to a non-resident person is exempt from any tax in Malta, provided such interest is not related to a permanent establishment which the said person may have in Malta.

Malta does not impose any withholding tax, irrespective of the recipient's tax status and the country of residence.

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

Malta does not have any thin capitalisation rules or debt-to-equity ratios, but the Income Tax Act contains a general anti-avoidance provision. By virtue of this anti-avoidance provision, the tax authorities may disregard any scheme which reduces the tax payable.

However, a taxpayer may apply for an Advance Revenue Ruling on the tax treatment of any transaction which concerns any financial instrument or other security, and on any transaction which involves international business (see also question 3.5 below).

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

There are no statutory safe harbour rules. The principle for related party transactions should be the arm's length principle. However, a taxpayer may apply for an Advance Revenue Ruling (ARR) and thus have certainty on the tax treatment of a transaction. ARRs are valid for five years and renewable for a further five-year period, and are still valid for a two-year period if there is a change in the legislation which affects the ruling.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

As already mentioned in question 3.4 above, Malta does not have any thin capitalisation rules, debt-to-equity ratios or other rules with respect to financing arrangements; however, a scheme which reduces the tax payable may fall foul of the general anti-avoidance provision and thus be ignored for income tax purposes. Normally, the Maltese tax authorities accept guarantees by a parent company and acknowledge that this will also have a bearing on the interest rate charged. It is fairly common, when such arrangements exist, to obtain an Advance Revenue Ruling.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

Malta does not impose any restrictions or limitations on the interest payments made by a local company to a non-resident person. The Income Tax Act exempts from tax, interest received by non-residents, provided there is no permanent establishment in Malta.

3.8 Is there any withholding tax on property rental payments made to non-residents?

Rental payments with respect to immovable property situated outside Malta are not subject to any tax or withholding tax. If the immovable property is situated in Malta, the income is considered to be income arising in Malta and subject to income tax. Malta does not impose a withholding tax as such, but tax must be deducted at the rate of 25% or 35% depending on whether the payment is made to an individual or a company. The tax deducted by the person making the payment must be remitted to the tax authorities as an advance payment of the income tax on such rental income.

The landlord or owner of the property, irrespective of whether it is a company or individual, has the option to have the rental income subject to a final withholding tax of 15% as long as the rental property is used for residential purposes. No further tax will be due on the rental income which has been subject to the final withholding tax of 15%.

3.9 Does your jurisdiction have transfer pricing rules?

Malta does not have any specific transfer pricing rules but adopts the general arm's length principle.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

Companies are subject to income tax at a standard rate of 35%. A company in receipt of foreign source income may claim the FRFTC (see question 1.1) so that the tax payable on such foreign source income or gain is reduced to 18.75%.

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Companies engaged in petroleum produced in Malta are subject to a tax rate of 50%.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

The tax base follows the commercial or statutory accounts, which are based on International Financial Reporting Standards (IFRS) as adopted by the EU or General Accounting Principles for Small Entities (GAPSE), subject to certain adjustments. Certain items of expenditure which reduce the accounting profits may not be allowable or deductible for tax purposes, and are therefore added back in order to calculate the chargeable income. This applies to provisions, unrealised expenses and foreign exchange differences and payments of a voluntary nature (such as donations).

On the other hand, tax legislation may provide for certain deductions which are not claimed as expenses in the commercial accounts. This may apply in cases of inflated allowances in excess of the actual expenditure incurred (for example, R&D allowances).

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

The general rule is that expenses which are incurred in the production of the income are allowable for income tax purposes, whilst expenses which are of a private nature, of a capital nature, recoverable from any insurance or of a voluntary nature, are not allowed for income tax purposes.

Expenses or amounts which have not been incurred, such as unrealised exchange difference or provisions, are not allowable/ deductible for income tax purposes.

4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

Malta's income tax laws do not require consolidated accounts for tax purposes. However, groups of companies may still benefit from 'group relief' which enables a member company to surrender tax losses to another group member. The losses surrendered by a group company may be set off against the tax profits or chargeable income of the claimant company. The surrendered losses may be carried forward by the claimant company and these are available for set-off against future profits. The surrendering and claimant company must have identical accounting periods, have satisfied the definition of a group during the last financial year, and be tax-resident in Malta. Hence, relief for losses incurred by overseas subsidiaries is not possible under Maltese law.

The 'group relief' provisions contain specific anti-abuse provisions to restrict the surrendering of losses made by companies whose activities are related to immovable property.

Companies are considered to be members of the same group if more than 50% of the capital is owned directly or indirectly by the same company. The 50% test applies to share capital, voting rights, profits available for distribution and distribution on a winding up.

A much wider definition of a group of companies applies for capital gains tax purposes. In this case, companies of which more than 50% are owned and controlled by the same shareholders qualify as a group for capital gains tax purposes. Assets may be transferred within a group without any capital gains tax.

4.5 Do tax losses survive a change of ownership?

Tax losses may be carried forward indefinitely and may also be utilised if there is a change in the company shareholding, provided that the company's trading activities do not change and the change in the company shareholding (e.g. by share transfer, merger, etc.) is not deemed by the Maltese tax authorities to be a tax avoidance scheme.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

No. Subject to double taxation relief which reduces the Malta tax payable, chargeable income is subject to income tax at the standard rate of 35%, irrespective of whether it is distributed or not.

Profits which are distributed are brought to charge in the shareholder's hands at the grossed-up amount and full credit is given for the tax already paid/suffered by the company on the dividend so distributed. Under Malta's full imputation system of taxation (which ensures a full credit of the income tax paid by the company), it may be said that profits which are distributed by a company are not subject to any income tax at all at the level of the distributing company (except for the distribution of untaxed profits to a Maltese tax-resident individual). Distributions of untaxed profits to a Maltese tax-resident individual are subject to a final withholding tax of 15%.

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

There are no other national taxes payable by companies.

Certain capital gains are brought to charge together with trading income. Capital gains arising on transfers of immovable property or other specific assets such as securities, patents, trademarks, trade-names and business goodwill are brought to charge as part of the taxpayer's chargeable income.

Transfers of certain immovable property may be subject to a property transfer tax, which varies between 2% and 12% of the transfer value, instead of taxing the actual capital gain (see question 5.1 below).

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

Capital gains which are chargeable to tax in Malta are those gains or profits realised from immovable property, securities (excluding preference shares having a fixed rate of return), business goodwill, copyright, patents, trademarks, trade-names and the transfer of the beneficial interest in a trust.

There are specific rules on how to calculate or determine the capital gain on immovable property and securities, including securities in companies which own immovable property. The rules also contain formulae and inflation-linked adjustments, which mean that the effective tax rate can be less than the standard rate of 35%.

A capital gain is brought to charge as part of the chargeable income, but a capital loss cannot be set off against other income for the year

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of assessment but shall be carried forward and set off against capital gains in respect of subsequent years of assessment until the full loss is absorbed.

5.2 Is there a participation exemption for capital gains?

Yes, companies that derive dividend income and/or capital gains from a 'participating holding' may opt for the 'participation exemption'. Alternatively, the Maltese company may elect to be subject to tax and pay income tax on dividend received and capital gains arising from a participation holding and then upon a distribution of profits; the shareholder is entitled to claim a full refund of the company income tax.

A shareholding in a company qualifies as a 'participating holding' (and therefore for the participation exemption) if the Maltese company holds equity shares in a company or a qualifying body of persons and it:

- has at least 10% of the equity shares in another company;
- is an equity shareholder in a company and is entitled to purchase the balance of the equity shares of the other company, or it has the right of first refusal to purchase such shares;
- is an equity shareholder in a company and is entitled to either sit on the Board or appoint a person on the Board of that subsidiary as a director;
- is an equity shareholder which invests in a company a minimum of €1,164,000 (or the equivalent in a foreign currency) and such investment is held for a minimum uninterrupted period of not less than 183 days; or
- holds the shares in a company for the furtherance of its own business and the holding is not held as trading stock for the purpose of a trade.

Furthermore, the 'target company' must either satisfy any one of the following three conditions in order to claim participation exemption on the dividend income:

- it is resident or incorporated in the EU;
- it is subject to foreign tax of a minimum of 15%; or
- it does not derive more than 50% of its income from passive interest and royalties,

or else it must satisfy both of the following conditions:

- the shares in a body of persons not resident in Malta must not be held as a portfolio investment; and
- the body of persons not resident in Malta or its passive interest or royalties have been subject to tax at a rate which is not less than 5%.

5.3 Is there any special relief for reinvestment?

Where an asset (which is subject to capital gains and is used in a business for a period of at least three years) is transferred and replaced within one year by an asset used solely for a similar purpose in the business, any capital gain realised on the transfer is not subject to tax but the cost of acquisition of the new asset is reduced by the said gain. When eventually the asset is disposed of without replacement, the overall gain shall take into account the transfer price and the cost of acquisition, reduced as aforesaid.

Furthermore, where an asset is transferred from one company to another and such companies are deemed to be a group of companies, it shall be deemed that no loss or gain has arisen from the transfer. This is also applicable where the two companies are controlled and beneficially owned, directly or indirectly, to the extent of more than 50%, by the same shareholders.

The Income Tax Act contains anti-abuse measures in relation to the above two tax deferral provisions, to ensure that companies benefiting from the above do not transfer the asset to third parties.

5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

No, Malta does not impose any withholding taxes on the transfer of assets or shares in a Maltese company. A share transfer is subject to duty on documents; however, exemptions are available for transfers made in a company which has obtained an exemption from such duty. Such exemption is granted to companies whose business interests are outside Malta and the shareholders of the company are, directly or indirectly, non-resident persons.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

There are no taxes imposed on the formation of a subsidiary. However, a registration fee (ranging from a minimum of €245 up to a maximum of €2,250) is payable to the Registry of Companies. The registration fee is calculated on the company's authorised share capital.

6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?

A Maltese subsidiary/company is subject to tax on a worldwide basis, subject to the tax credits and refunds which may apply upon a distribution of profits. However, a branch of a foreign company, known as an 'oversea company', is only subject to tax on income attributable to the branch. The income computation follows that adopted for domestic companies, and the same principles apply. The branch is allowed to deduct a proportion of the expenses associated with the head office management if these are related to the Malta branch. In practice, there are minor differences between having a branch and a locally registered subsidiary.

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

A branch is subject to income tax in Malta as if it were a wholly independent entity. Taxable profits are based on accounting profits (see questions 4.2 and 4.3 above) and the tax authorities follow the OECD principles in determining the profits attributable to a branch.

6.4 Would a branch benefit from double tax relief in its jurisdiction?

A branch of a foreign company or an overseas company may benefit from Malta's network of tax treaties, provided it is a tax resident in terms of the treaty provisions. The tax legislation does not contain specific provisions applicable to branches, and these are treated as a permanent establishment subject to income tax on income attributable to the branch.

Apart from tax treaty provisions, an overseas company may also benefit from unilateral relief.

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There are no major differences between the tax treatment of branches and subsidiary companies, except that the determination of chargeable income of a Malta branch may be more subjective (for example, with respect to the allocation of expenses or if a cost-plus arrangement is applicable) and therefore it may be advisable to seek an Advance Revenue Ruling or a tax confirmation from the tax authorities.

6.5 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

No, Malta does not impose any withholding taxes. Profits may be remitted without any tax implications whatsoever.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

Yes, profits earned in an overseas branch (of a Maltese company) are subject to income tax at the standard rate of 35% subject to any double taxation relief. Such profits are allocated to the FIA. (See further details on the implications arising from distributions from the FIA in question 3.1 above.)

However, branch profits may also benefit from the participation exemption regime which is normally applicable to dividend income and capital gains from participating holdings / equity investments.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

The likelihood is that such dividend income will qualify for the full exemption from tax under Malta's generous participation exemption regime. If not, dividends are subject to tax in Malta but credit is given for any foreign taxes against the Malta tax.

7.3 Does your jurisdiction have "controlled foreign company" rules and, if so, when do these apply?

No, Malta does not have any CFC rules.

8 Taxation of Commercial Real Estate

8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?

Non-resident persons are subject to income tax in Malta on the disposal or transfer of any immovable property in Malta. Subject to various conditions, the sale of such immovable property is either subject to tax at the rate of 8% on the transfer value, or the gain/profit is subject to tax using non-resident tax rates with the highest tax rate being 35%.

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?

Various provisions in the Income Tax Act bring to charge the sale of shares in companies which hold immovable property situated in Malta. Rules apply in determining the market value of a company which holds immovable property situated in Malta, to take into account the value of the property being indirectly disposed of, and various anti-abuse provisions and clawback provisions apply when such shares are disposed.

8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

Malta does not have any special regime similar to REITs. A trust which holds immovable property situated in Malta is 'seen through' for income tax purposes, and is thus subject to the same provisions as if the immovable property were held directly by the beneficiaries.

9 Anti-avoidance and Compliance

9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

The income tax legislation contains a few general anti-avoidance provisions.

One provision provides that where any scheme which reduces the amount of tax payable by any person is artificial or fictitious, or is in fact not given effect to, this shall be disregarded by the tax authorities and the person concerned is assessable accordingly.

Another provision provides that where 'a series of transactions' is effected with the sole or main purpose of reducing the amount of tax payable by a person under the 'investment income provisions', then such person would be assessable as if the said 'investment income provisions' did not apply. (The investment income provisions provide for a final tax of 15% on certain investment income.)

A similar anti-avoidance provision (applicable to the investment income provisions) applies to the Flat Rate Foreign Tax Credit.

Another anti-avoidance provision relates to group relief. If a company is a member of a group of companies and arrangements are in existence, the sole or main purpose of which is to reduce any company's tax liability, then that company shall be treated as not being a member of that group of companies for any year preceding a year of assessment in which the said arrangements are in existence. There are also other specific anti-abuse provisions related to group relief.

Another provision provides that when an asset is transferred from one company to another company within a group, and the transfer is exempted from tax as the two companies form part of a group, the transfer will be subject to property tax at the rate of 8% if the companies cease to be a group before the lapse of six years.

9.2 Is there a requirement to make special disclosure of avoidance schemes?

No, there is no legal requirement to make special disclosure of avoidance schemes.

9.3 Does your jurisdiction have rules which target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

No specific legislation or rules have been drawn up to target persons promoting, enabling or facilitating tax avoidance; however,

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such persons may still be subject to investigations and charged as accomplices to a crime.

9.4 Does your jurisdiction encourage "co-operative compliance" and, if so, does this provide procedural benefits only or result in a reduction of tax?

No. Malta does not grant any reduction in tax if paid in time or in advance; however, penalties and interest are imposed if deadlines are not adhered to.

The Inland Revenue Department also encourages the online submission of returns, and provides for a longer submission period if online access and submission are used.

The Income Tax Act also provides for reduced penalties and interest rates if any errors or omissions are declared by the taxpayer.

10 BEPS and Tax Competition

10.1 Has your jurisdiction introduced any legislation in response to the OECD's project targeting Base Erosion and Profit Shifting (BEPS)?

No legislation has been introduced as yet in connection with BEPS.

10.2 Does your jurisdiction intend to adopt any legislation to tackle BEPS which goes beyond what is recommended in the OECD's BEPS reports?

Malta has not formally adopted any of the BEPS recommendations, but as an EU Member State, Malta has to adopt and transpose EU Directives, some of which may have been triggered by the BEPS recommendations. These include: changes in the EU Administrative Cooperation Directive, which also includes Country-by-Country Reporting; the proposed EU Anti-Tax Avoidance Directive, which includes various recommendations derived from the BEPS recommendations; and the anti-abuse rules in the Parent-Subsidiary Directive.

10.3 Does your jurisdiction support public Country-by-Country Reporting (CBCR)?

Malta has implemented CBCR as a result of the relevant EU Directive (see question 10.2 above).

10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

No preferential tax regimes exist targeting any specific areas or industries. However, the legislation contains various provisions providing exemptions, deductions and tax credits in connection with specific sources of income. These include exemptions from tax on: dividend income and capital gains originating from participating holdings (see question 5.2 above); income derived from certain patents, copyrights and trademarks; the value of certain assets revalued upon redomiciliation to Malta; and the income of a collective investment scheme.

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Walter currently advises a number of multinational companies and sits on the board of directors of a number of companies, including finance companies, 'captives' and investment vehicles. Aside from his wealth of experience in international tax matters, including tax planning, treaty interpretation and advice, he also has a great deal of knowledge on corporate matters, company law, management, and administration. He specialises in treaty planning, holding companies, intellectual property, and treasury and finance operations.

During his time as a Big 4 partner, he was responsible for the firm's tax department and was a regular participant in international tax conferences and events. He continues to give various lectures and presentations, and is the author of various taxation articles. For a number of years, he was an examiner in taxation with the UK's Association of Chartered Certified Accountants.

Walter holds a first degree in Accounting and a post-graduate qualification in International Tax Law. He is a fellow of the Malta Institute of Accountants, and a member of the Institute of Financial Accountants in the UK, the Malta Institute of Taxation, the Institute of Financial Services Practitioners and the International Fiscal Association. He has been involved in various councils and committees in the fields of taxation and financial services.

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Mary Anne worked for some time in the tax department of one of the Big 4 audit firms before moving to Avanzia Taxand in 2005. She has considerable experience in a number of areas, including corporate tax, personal tax, employment issues, capital gains tax, indirect taxation and liquidations.

She is a tax consultant, advising a number of multinational companies, financial institutions, funds and high-net-worth individuals in her areas of expertise, and is often involved in cross-border financing transactions and reorganisations, as well as VAT issues.

Aside from her experience in local and international tax matters, she assists clients in tax negotiations and in obtaining advance revenue rulings and tax confirmations from the tax authorities.

In 2009, 2013 and 2016 Avanzia Taxand was named 'Malta Tax Firm of the Year' by the *International Tax Review*, whilst in 2011, 2014 and 2015 Avanzia Taxand was chosen as the winner of the *Corporate INTL Magazine* Global Award for 'Tax Law Firm of the Year in Malta'. Avanzia Taxand was also ranked as a Tier 1 Firm in *International Tax Review*'s Transactional Tax Survey.

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