
EMPLOYMENT INCOME

INCOME TAX IMPLICATIONS



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Index

1	Background	1
2	Income tax implications for individuals	1
2.1	Resident and domiciled individuals	2
2.2	Resident or domiciled individuals	2
2.3	Temporary residents	2
2.4	Individuals who are neither resident nor domiciled	2
2.5	Taxation of employment income	3
3	Maltese tax resident individuals working outside Malta	3
3.1	Special tax rates for overseas employment	3
3.2	Tax implications for work performed outside Malta	3
4	Income tax implications for expatriates	3
5	Fringe benefits	4
5.1	Car benefits	4
5.2	Use of assets including accommodation	4
5.3	Other benefits	4
5.4	Non taxable fringe benefits	4
6	Other provisions	4
6.1	Final withholding tax provisions	5
6.2	Capital gains tax	5
6.3	Payment of tax	5
6.4	Tax compliance issues	5
6.5	Other compliance matters relating to employment in Malta	6

1 Background

In recent years, Malta has experienced a significant increase in international business and foreign direct investment. Malta's favourable legislative framework, excellent infrastructure, state of the art telecommunications, highly qualified professional workforce, and an English speaking and business friendly atmosphere have been a catalyst to attract foreign investment in Malta. Malta's European Union membership has added credibility to the country's reputation as an efficient and modern financial centre.

Malta also offers a favourable legislative fiscal framework which has been approved by the EU, and this has reinforced Malta's position as an ideal and strategic location. This also provides comfort to foreign investors wishing to use Malta as their European base.

Malta has an extensive tax treaty network, with most European countries and other countries such as Australia, Canada, China, India, Malaysia, Pakistan and South Africa. Most of the tax treaties are based on the OECD model, and these, together with unilateral tax relief provisions and the flat rate foreign tax credit given by domestic legislation are an important and effective tool to ensure the elimination of double taxation.

The Income Tax Act has been in place since 1948 and subject to certain exemptions, income tax is charged on all persons resident and domiciled in Malta and on income arising in Malta. Corporate entities are also subject to income tax and in view of Malta's full imputation system of taxation, corporate profits are only brought to charge once. Individuals are subject to tax at progressive rates ranging between 0% and 35% whilst companies are subject to income tax at a standard rate of 35%.

2 Income tax implications for individuals

Subject to treaty provisions, employment income arising in Malta is subject to income tax in Malta at the following progressive rates:

Married			Single		
€	€	%	€	€	%
0	to 11,900	0	0	to 8,500	0
11,901	to 21,200	15	8,501	to 14,500	15
21,201	to 28,700	25	14,501	to 19,500	25
28,701	and over	35	19,501	and over	35

Married persons may opt for a joint income tax computation or a separate income tax computation. No deductions are given against the gross employment income which is brought to charge to tax except for a deduction in respect of private school fees, alimony payments, childcare fees, homes for elderly fees and sports fees.

The income tax liability also depends on the residence and domicile of the individual. Domicile is not clearly defined in Maltese legislation. The concept of domicile is a legal concept and generally refers to the place where a person was born, lives and establishes his home and intends to live indefinitely. Maltese law adopts the UK approach to domicile whereby a person previously not connected to Malta who establishes residence here will not be easily deemed to have attained a Maltese domicile. Such a Maltese domicile will only be attained if such an expatriate has, and circumstances show, that he has lost his foreign domicile and intends to indefinitely and permanently establish Malta as his home.

The Income Tax Act defines a 'resident in Malta' as being any individual who resides in Malta. Although not clearly defined, the Income Tax Act makes distinctions between ordinarily residence, residence and temporary residence. The distinction is primarily based on the intention to stay in Malta as well as the duration of such stay.

2.1 Resident and domiciled individuals

Individuals are subject to tax in Malta on the basis of their residence and domicile. Individuals who are deemed to be both resident and domiciled in Malta are subject to income tax on a worldwide basis. Income earned, accrued or derived in Malta or elsewhere is subject to tax in Malta irrespective of whether the foreign source income is remitted to Malta or not.

Due to the strict interpretation of domicile it is very difficult for an expatriate to attain a Maltese domicile and hence such an expatriate will not be taxed on a worldwide basis.

2.2 Resident or domiciled individuals

Individuals who are either resident or domiciled in Malta are taxed on a source basis and remittance basis. Source basis refers to income arising in Malta mainly through employment exercised in Malta and capital gains arising in Malta. Income earned abroad and remitted to Malta is also subject to Maltese income tax. Foreign capital gains are not subject to any tax in Malta irrespective of whether they are remitted or not.

2.3 Temporary residents

Temporary residents are exempt from paying tax on income arising outside Malta, even if this is remitted to Malta. Temporary residents are classified as such if they do not intend to establish residence in Malta and stay in Malta for an aggregate period of less than six months in one calendar year. Temporary residents are charged on income arising in Malta at the normal rates.

2.4 Individuals who are neither resident nor domiciled

Individuals who are neither resident nor domiciled in Malta are subject to tax only on income arising in Malta. The applicable rates are different from those applicable to resident persons and are as follows:

€	€	%
0 to	700	0
701 to	3,100	20
3,101 to	7,800	30
7,801 and over		35

These rates are also applicable to non-resident individuals who derive income from entertainment activities exercised in Malta for a period which exceeds fifteen days in a calendar year.

Special provisions apply for non-residents who derive income from entertainment activities exercised in Malta for a period not exceeding fifteen days in a calendar year who are charged tax at a flat rate of 10% on the gross payment receivable in respect of the said activities.

The above scenarios may be summarised as follows:

	Worldwide basis	Remittance basis	Source basis
Resident and domiciled	✓	-	-
Either resident or domiciled	-	✓	✓
Temporary resident	-	-	✓
Neither resident or domiciled	-	-	✓

2.5 Taxation of employment income

In view of the above rules and subject to Malta's tax treaty provisions, when the income earning activity is in Malta (source basis income), then the individual is subject to income tax in Malta. Income tax is charged at the same rates (indicated on page 2) irrespective of the individual's tax residence and domicile.

As explained above, the issue of residence and domicile is not of any particular relevance when it comes to the taxation of an individual exercising employment in Malta. However, these may have tax implications for an individual earning other income (not employment income) during his stay in Malta.

3 Maltese tax resident individuals working outside Malta

3.1 Special tax rates for overseas employment

Maltese tax resident individuals who take up employment overseas with a Maltese person are subject to a standard tax rate of 15% on such employment income. Employees may only qualify for the standard rate only if:

- the income is deemed to be employment income, and
- the contract of employment requires that the performance of work or duties are mainly outside Malta, but excludes any service on a Maltese ship or aircraft or with the Government of Malta, and
- the emoluments are received in respect of work or duties carried out outside Malta or for a period spent in Malta but which is connected with such work or duties outside Malta.

The overseas emoluments are to be deemed to be the last part of the individual's total income in computing the tax liability. This ensures that the maximum relief is available under this proviso.

3.2 Tax implications for work performed outside Malta

Maltese individuals who are no longer tax resident in Malta will no longer be subject to any income tax in Malta on any income arising outside Malta since they will not be subject to tax on a worldwide basis but only on any income remitted to Malta or income arising in Malta.

4 Income tax implications for expatriates

An individual falling under any of the following categories is deemed to be an expatriate and therefore subject to income tax in Malta:

- Employees and other work permit holders for up to one or more years,
- Individuals working in Malta on short term engagements, that is; holding a work permit for up to six months,
- Holders of a temporary visa who are either retired or based temporarily in Malta with their family while they are working abroad.

Expatriates are subject to income tax on any income arising in Malta at the progressive rates indicated in 2. Exemptions from income tax in Malta may be available if a double taxation agreement exists between Malta and the country of residence of the expatriate. Most double taxation agreements are based on the OECD model which exempts the employment income from any tax in Malta if:

The recipient is present in Malta for a period or periods not exceeding in aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned;

- The remuneration is paid by, or on behalf of, an employer who is not a resident of Malta ; and
- The remuneration is not borne by a permanent establishment or a fixed base which the employer has in Malta.

5 Fringe benefits

Benefits in kind and fringe benefits may be subject to income tax as part of the employment income and the fringe benefit rules apply for Maltese individuals and expatriates alike. The following is a summary of the main fringe benefits and their tax implications.

5.1 Car benefits

The availability of a company car for personal use is taxable on the basis of the car value, the car use value, the maintenance value, the fuel value and the private use value. The car use value, the maintenance value, the fuel value and the private use value are determined with reference to the car value. The various percentages and values to calculate the fringe benefit are given in the fringe benefits rules.

5.2 Use of assets including accommodation

The fringe benefit on the use of assets (including accommodation premises) is determined on the basis of the value of the property being made available to the employee. In the case of immovable property, the fringe benefit value is deemed to be 5% of the market value or the original cost of the immovable property whichever is the higher.

5.3 Other benefits

Other taxable fringe benefits include the transfer of assets at subsidised prices, low interest rate loans, reimbursement of bills of a personal nature and the provision of discounted goods and services.

5.4 Non taxable fringe benefits

Not all expenses paid to the employee form part of the fringe benefit value. Reimbursement of expenses which are not of a personal nature are not taxable in the hands of the employees. Similarly, reimbursement to employees of expenses related to business travel, provision of canteen services, provision of health insurance, telephone service, use of computer equipment and recreational or child minding facilities are not taxable.

In some cases it may be advisable to ask for a tax confirmation that a particular expense does not fall within the definition of a taxable fringe benefit. Such confirmation is at the discretion of the Commissioner of the Inland Revenue.

6 Other provisions

Income tax collection is done on a national basis under the Final Settlement System (FSS) which is similar to the Pay As You Earn system (PAYE). Tax is charged and collected by the Inland Revenue Department. Employers deduct the appropriate FSS amount from the employee's gross wage and remit the amount to the Inland Revenue Department on a monthly basis. No other local authority is authorised to collect taxes from residents. No municipal taxes apply in Malta.

6.1 Final withholding tax provisions

Investment income such as interest paid by a local bank may be subject to a final withholding tax of 15%. The investment income provisions contained in the Income Tax Act are extended to other specific investment income arising in Malta, including any investment income arising from shares quoted on the Maltese stock exchange and Government bonds. Income subject to the final withholding tax is not taxed any further in Malta and the withholding tax is not refundable to the taxpayer.

6.2 Capital gains tax

Capital gains or profits arising from immovable property, securities, business goodwill, and certain intellectual property rights may be subject to capital gains tax in Malta. Capital gains are considered to form part of the taxpayer's chargeable income and brought to charge to income tax at the progressive rates.

Transfers of immovable property situated in Malta gives rise to a property transfer tax equivalent to 12% of the transfer value unless such property was the ordinary residence of the individual for a period of more than three years in which case any capital gain realised is exempt from capital gains tax.

Alternatively and subject to certain conditions being satisfied, taxpayers may elect to be taxed at 35% on the actual gain realised. The chargeable gain is determined by deducting the cost of acquisition from the transfer value. If the transfer is done within 5 years from acquisition or the property is situated in a designated area, the transferor may elect to have the capital gain taxed at 35% instead of paying the 12% property transfer tax on the transfer value.

Persons qualifying as non-residents may also opt to be charged on capital gains arising out of immovable property in Malta at the 35% rate on the gain instead of the final property tax of 12% on transfer value.

6.3 Payment of tax

Tax on employment income is deducted and remitted by the employer on a monthly basis under the Final Settlement System (FSS). This system is tailored so that the correct amount of income tax is deducted from the employment income. The amount paid by the employer and remitted to the Inland Revenue Department is credited to the employee. Malta adopts a self assessment system, however, the computation of the tax due on employment income is the responsibility of the employer paying such income. In most cases the amount of tax paid under the FSS should be equal to the income tax liability under the self assessment system so that no further tax is due to be paid by the tax return date.

6.4 Tax compliance issues

The income tax return of individuals under the self assessment system, must be filed within six months of the calendar year (basis year). Therefore the tax return for a particular year is due by June of the following year. Every individual is responsible to complete the form correctly and include all income arising during the previous year, whereby the income tax due is computed. Details as to the amount of days spent in the country and the option as to whether to have income brought to charge at the single or married rates are required in the tax return. Employed persons who have no other sources of income should have no outstanding tax due as this would have been paid through the final

settlement system. Individuals who have various sources of income may be liable to pay the settlement tax by the end of June or else be entitled to a tax refund of any excess tax paid.

Individuals who are only in receipt of income which has been subject to the final withholding tax or employment income taxed under the Final Settlement System have the option to submit a declaration by the end of April, instead of filing the Self-Assessment form mentioned above.

6.5 Other compliance matters relating to employment in Malta

Employers seeking to employ a foreign individual to work in Malta need to apply for an employment permit for such individual before the employment can be actually taken up. The employment permit is always granted to EU citizens, however it is still mandatory to apply for it. The envisaged period of employment is not relevant in determining the need or otherwise of an employment permit as this is required as from the first day of employment.

Employment in Malta may also expose individuals to the payment of social security contributions in Malta, unless evidence is submitted to the local authorities that social security contribution payments are being done in another EU state. To this effect a form known as the E101 would need to be produced to the local authorities. Other formalities include the submission of the relative Employment and Training Corporation forms and the registration of the individual for taxation purposes.

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