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# TAXATION OF PROFESSIONAL SPORTS PEOPLE



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## 1.1 Introduction

The income tax legislation in Malta does not contain specific provisions or rules with respect to professional sports people except for a particular provision (article 56(18A) of the Income Tax Act, Cap 123) which deals with entertainment activities by non-resident persons and may also apply to professional sports people.

The said article provides that if a non-resident person derives income from entertainment activities exercised in Malta for a period not exceeding fifteen days, the tax is charged at the rate of 10% of the gross payment receivable. If the period exceeds fifteen days then the income is subject to tax at the following rates which are applicable to non-resident persons:

€		€	%
0	to	700	0
701	to	2,400	20
2,401	to	4,700	30
over 4,700			35

The word entertainment is not defined in the Income Tax Act and therefore reference is often made to the definition contained in the OECD model tax convention. It must be pointed out that Malta has concluded over 46 double taxation agreements and most of them are based on the OECD model tax convention.

Although Maltese income tax legislation does not contain specific provisions with respect to professional sports people, we analyse hereunder the current legislative framework applicable to income derived from the exploitation of one's own image rights both at a national and an international level through the practice of interposing companies, the residence requirements, and the election to be taxed as a non tax resident in Malta, as well as certain exemptions provided by domestic legislation that may be applicable.

However before dealing with these issues, it is appropriate to highlight the basis of taxation and how the tax residence and domicile of an individual affect the chargeability to Malta income tax.

Malta has a worldwide system of taxation, gives ordinary credit for foreign taxes and has a full imputation system of taxation.

Income arising in Malta is subject to income tax whether the person to whom it accrues or who receives it, is resident in Malta or not – unless specifically exempt by virtue of a specific provision in the Income Tax Act. For example, article 12(1)(c) of the Income Tax Act exempts from any tax, interest and royalties accruing to a non-resident person.

Income arising outside Malta is taxable if the person is both ordinarily resident and domiciled in Malta. Indeed such person is liable to tax on a worldwide income basis. On the other hand, income arising abroad to a person who is tax resident but not domiciled is only taxable on the income remitted to Malta.

The above may be summarised or illustrated as follows:

	<b>Worldwide basis</b>	<b>Remittance basis</b>	<b>Source basis</b>
Resident and domiciled	✓	-	-
Either resident or domiciled	-	✓	✓
Temporary resident	-	-	✓
Neither resident or domiciled	-	-	✓

The matrix overleaf distinguishes between income and capital gains and how these sources are treated with respect to individuals who are resident and domiciled and how they are treated with respect to individuals who are resident but not domiciled.

	<b>Resident and Domiciled</b>	<b>Resident but not Domiciled</b>
Malta Source Income	✓	✓
Foreign Source Income – Remitted	✓	✓
Foreign Source Income – Not Remitted	✓	x
Malta Source Capital Gains (subject to exemptions)	✓	✓
Foreign Source Capital Gains – Remitted	✓	x
Foreign Source Capital Gains – Not Remitted	✓	x

## 1.2 Image right licensing arrangements

Image right licensing arrangements or royalties accruing to or derived by a sportsman or any other person not resident in Malta is exempt from any tax in Malta (under article 12(1)(c) of the Income Tax Act). This exemption is only applicable if the sportsman or the person is not engaged in any trade or business in Malta through a permanent establishment.

If the sportsman is resident in Malta then the normal income tax rates apply. Different progressive rates apply to individuals who opt for a joint income tax computation (applicable to married couples) or a separate income tax computation. These progressive tax rates applicable for basis year 2010 are as follows:

Rates for married couple				Rates for individuals			
€		€	%	€		€	%
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
Over 28,700			35	Over 19,500			35

Since the maximum tax rate applicable to individuals and the tax rate applicable to companies are both 35% there is no scope in using a Maltese company to exploit image rights if the sportsman is tax resident in Malta.

On the other hand, if the sportsman is not resident in Malta the use of a Maltese company may be tax efficient since the effective tax rate upon a distribution of profits by the Maltese company to the shareholder / sportsman would be 10% when such company is in receipt of passive royalties. Upon dividend distribution from a Maltese company, the shareholder is entitled to claim a tax refund equivalent to five sevenths of the company tax credited to the shareholder. Dividend payments paid to shareholders are not subject to any withholding taxes. The income tax treatment may be illustrated as follows:

Malta Company	
Passive royalty income	€ 100
Chargeable Income	100
Tax thereon at 35%	35
Shareholder	
Gross dividend from Malta company	€ 100
Tax thereon	35
Credit for tax at source	(35)
Tax due by shareholder	-
Tax refund equivalent to 5/7ths of company tax paid	(25)

On the other hand, if the Malta company is actively dealing in royalties, then the effective tax rate is 5% (since the refund is equivalent to six sevenths).

If the sportsman is employed by the Maltese company and the employment is not exercised in Malta, and the sportsman is not resident and domiciled in Malta, then the said employment income is not subject to any income tax in Malta.

## 1.3 VAT on the licensing of image rights

The licensing of sports people's image rights by their companies to traders or professionals entails the provision of a service that is subject to value added tax (VAT) at the standard rate of 18%.

Although Maltese VAT legislation does not expressly establish the treatment applicable to the licensing of image rights, the Maltese VAT authorities consider that the place of supply of such transaction is where the customer is established. When the customer is, an EU taxable person as such in terms of Schedule 3 of the VAT Act of Malta or a non EU customer, and is not established in Malta, then the place of supply is outside Malta and thus no Maltese VAT is applicable.

If the place of supply is in Malta, then Maltese VAT at the rate of 18% will apply. Taxpayers which are registered in Malta under Article 10 of the VAT Act, may recover the input VAT and thus VAT has neutral effect.

## 1.4 Withholding tax on image rights

As already mentioned in page 2, Maltese tax legislation exempts from any tax interest and royalties paid to a non-resident. Moreover, Malta does not impose any withholding taxes and therefore royalties with respect to image rights and any other royalties may be paid gross of any tax. This legislative provision nullifies the reduced rate on royalties paid by a Maltese tax resident person which is found in the tax treaties which Malta has concluded with other countries. However it is important that the income is indeed a royalty for the above exemption to apply.

The tax treaties provide different categories in which to group income: business income, artiste's and sportsperson's income, royalties, and the residual clause for other income.

Classifying the income in one or another group is relevant from a tax point of view since:

- If the income is considered to constitute business income, it will not be subject to tax in Malta since, according to the rules contained in the tax treaties, the taxing power corresponds to the State in which the company receiving the income is resident.

- If the income is considered to derive from an artistic or sports performance, it may be taxable in the State where such performance takes place.
- If the income is some other type of income that is not specified anywhere else in the tax treaty, the taxing power corresponds to the State of residence of the recipient company.

There is no Maltese case law regarding the above classification when it comes to image rights.

## 1.5 Special regime

In Malta, an individual is considered to be tax resident if he spends more than 183 days in Malta in a calendar year.

Tax resident individuals are subject to income tax (on income arising in Malta and income remitted to Malta) according to progressive rates depending on their level chargeable income, with a maximum tax rate of 35%. The progressive rates applicable to married persons and single individuals are shown on page 3.

Malta does not have a specific regime which is applicable to artistes and sports people.

However, Malta has a regime which is often referred to as the 'Permanent Residents Scheme' which could be of interest to artistes and sports people as long as they do not exercise any employment in Malta.

An individual may take up residence in Malta under the Residents Scheme by obtaining a certificate from the Inland Revenue. The certificate is issued for an indefinite period as long as certain conditions are satisfied on an annual basis. Holders of such a certificate and their dependants may enter and leave Malta as and when required without any formalities.

The Residents Scheme offers a number of fiscal incentives and advantages including:

- A flat rate of income tax of 15% on income remitted to Malta with a minimum tax liability of €4,193 per annum. Income arising abroad which is not remitted to Malta is not subject to any Malta tax;
- Worldwide basis of taxation is not applicable to persons who are resident but not domiciled in Malta;
- Capital gains remitted to Malta are not subject to any tax whatsoever;
- Access to Malta's wide treaty network as well as unilateral relief provisions. Under the tax treaties, certain income (such as dividends, interest and royalties) remitted to Malta

may qualify for reduced withholding tax rates whereas other income (such as pensions and capital gains) may be exempt from foreign tax;

- No net worth or wealth taxes;
- No inheritance tax. However upon the transfer or transmission (upon death) of real estate or shares in a company owning mainly real estate, a duty of €5 on every €100 or part thereof is payable. Other shares and securities attract a duty on documents of €2 on every €100 or part thereof;
- No real estate tax. Any capital gains realised on the transfer of one's own residence is exempt from tax if the property has been owned and occupied for at least three consecutive years and the property is transferred within one year of being vacated;
- No customs duties or VAT on household effects. Non EU residents may be required to put a deposit or a bank guarantee for the VAT / duty in question. Upon the expiry of 183 cumulative days stay in Malta such deposits or bank guarantees are refunded or cancelled provided the duration of stay can be proved.

Any foreigner, of whatever nationality, may submit an application under the scheme provided that the specific conditions are satisfied.

An individual is eligible for the Residents Scheme if:

- He/she has an annual income of at least €23,000 or capital of at least €349,000;
- He/she remits annually to Malta an income equivalent to €13,950 in his / her respect and €2,300 in respect of each dependant.

The Residents Scheme could be of interest to artistes or sports people who may want to retire to Malta or else active artistes and sports people who do not exercise any employment in Malta.

## 1.6 Overseas employment income

Maltese tax legislation provides for a standard income tax rate of 15% in respect of overseas employment income. Maltese resident sports people may benefit from this provision if their income is classified as employment income.

## 1.7 Tax deductions

Maltese legislation provides for a number of tax deductions which are available to companies:

- A tax deduction for sponsoring athletes or clubs in national and international sport events;
- A tax deduction for donations to non-profit making organisations or to an Art Fund;
- A tax deduction of up to €18,635 given to companies providing grants, awards or scholarships to Maltese artists.

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