

# Taxation and Investment in Malta 2011

Reach, relevance and reliability



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# 1.0 Investment climate

## 1.1 Business environment

Malta is a fully independent republic with a parliamentary democracy and an elected president as the head of state. The president is elected every five years by the House of Representatives, which consists of 65 Members of Parliament. The role of the president as head of state is largely ceremonial. Executive power rests with the Prime Minister and his cabinet. Malta has two main political parties, the Nationalist Party and the Labor Party.

Malta's economy is dominated by the manufacturing, financial services, tourism and ICT (information and communication technologies) sectors.

Malta relies on foreign trade, as it produces only about 20% of its food needs, has limited freshwater supplies and no domestic energy source. France and Italy are the leading sources of imports. Malta's main exports are machinery and transport equipment. Trade is oriented toward the EU, Asia and the U.S. In principle, Malta has no restrictions on trade with any country, except for countries with regard to which UN restrictions are imposed.

Malta joined the EU in 2004.

### Price controls

Malta has a free market economy in which the principle of market forces is applied to price formation. Direct or indirect fixed purchase and selling prices are prohibited.

### Intellectual property

According to the Enforcement of Intellectual Property Rights (Regulation) Act, "intellectual property rights" are rights accorded under the Copyright Act, the Trademarks Act and the Patents and Designs Act. Malta is a member of the World Intellectual Property Organization (WIPO), the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Universal Copyright Convention (UCC), the WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty and the World Trade Organization (WTO) Agreement. The necessary action is being taken to secure Malta's accession to the Protocol to the Madrid Agreement on the International Registration of Marks and the Hague Agreement on the International Registration of Designs.

### Patents

The Patents and Designs Act provides that, under certain conditions, inventions that are new, involve an inventive step and are susceptible of industrial applications are patentable. An application for a patent must be made to the Office of the Comptroller of Industrial Property, which maintains a register of patents. The term of a patent is 20 years from the filing date of the application. Malta is a signatory to the European Patent Convention (EPC) and the Patent Co-operation Treaty (PCT), which simplifies the filing of patent applications and conducting innovation searches in participating states. Applications for patents under these agreements also may be filed at the Malta Office of the Comptroller of Industrial Property and the countries for which the patent is sought must be designated in the application. The Comptroller publishes a notification in the government gazette or other official publication that the Comptroller may prescribe as soon as possible after the decision is made to grant a patent. Infringement proceedings must be brought before the Civil Court, First Hall, within five years from the date the injured party obtains knowledge of an infringement and the identity of the alleged infringer.

### Copyrights

The Copyright Act protects artistic works, audiovisual works, databases, literary works and musical works. Malta has transposed the Berne Convention (Paris Act) into Maltese law and implemented the pertinent provisions of the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPs agreement). A person that infringes a copyright may be subject to damages and/or a fine. A copyright expires 70 years after the death of the author or 70 years from the year in which the copyright was made or from the year in which it was lawfully made

available to the public. There is no requirement to register a copyright, but a Copyright Board exists to protect the interests of copyright holders in the different fields.

## **Trademarks**

A registered trademark is a property right obtained by registration of the trademark under the Trademarks Act and the proprietor of a registered trademark has the rights and remedies provided by the Act. A trademark means any sign capable of being represented graphically that is capable of distinguishing goods or services of one undertaking from those of other undertakings. An application for registration of a trademark must be made to the Comptroller of Industrial Property, who maintains a register of trademarks. The Act sets out several grounds for refusal of registration. Once an application has been accepted for registration, the certificate of registration must be issued and registration published in the official gazette or other official publication prescribed by the Comptroller. European trademark and design registration may be obtained from the EU's Office for Harmonization in the Internal Market (OHIM). Applications are made to the Malta Comptroller of Industrial Property and a selection can be made for any or all EU member states. Infringement of a registered trademark is actionable by the proprietor of the trademark by sworn application filed in the First Hall of the Civil Court.

## **1.2 Currency**

The currency in Malta is the Euro.

## **1.3 Banking and financing**

Banking and finance regulation is based on EU rules, in particular, the directives on banking, insurance and capital adequacy. The Banking Act regulates credit institutions and electronic money institutions. The Financial Institutions Act regulates institutions that do not take deposits or other repayable funds from the public.

## **1.4 Foreign investment**

Malta welcomes foreign direct investment. The Malta Enterprise Act enables Malta Enterprise is the agency responsible for the promotion of foreign investment and industrial development.

## **1.5 Tax incentives**

The Malta Enterprise Act enables Malta Enterprise, the agency responsible for the promotion of foreign investment and industrial development in Malta, to grant various incentives of a fiscal and non-fiscal nature to enterprises that carry out specific activities in Malta. Incentives fall under the following headings: Investment Aid, R&D and Innovation, Access to Finance, SME Development, Employment and Training, and Enterprise Support.

Investment Aid and R&D and Innovation incentives are affected through investment tax credits. The tax credit depends on the size of the enterprise and is offset against the company's tax liability for the relevant year of assessment, with any unabsorbed credits carried forward.

The incentives are generally targeted at enterprises that have a high value-added or high employment potential. Enterprises engaged in ICT development activities, manufacturing, audio visual and filming, healthcare, free port activities, eco-innovation and waste treatment, among others, may benefit from the incentives.

## **1.6 Exchange controls**

Malta abolished all exchange controls when it joined the EU, although it did negotiate to retain certain restrictions concerning the acquisition by nonresidents of 25% or more of the shares in a Maltese company that owns directly or indirectly or wishes to acquire immovable property situated in Malta. In such cases, authorization must be requested from the local authorities.

## 2.0 Setting up a business

### 2.1 Principal forms of business entity

Malta has three main forms of business entities with legal personality distinct from that of its member or members: the limited liability company, the partnership *en nom collectif* and the partnership *en commandite*.

A limited liability company is formed by means of capital divided into shares held by its members. The members' liability is limited to the amount, if any, unpaid on the shares respectively held by each of them. A limited liability company may be public or private.

The partnership *en nom collectif* and the partnership *en commandite* exist where two or more persons (partners) carry on business for the purposes of making a profit. The specific legal requirements for the limited liability company and the partnership are as follows.

#### Formalities for setting up a company

Every company and partnership must be registered with the Registrar of Companies. A company or partnership will be validly constituted when a memorandum of association or a deed of partnership is entered into, and a certificate of registration is issued in respect thereof, by the Registrar. This certificate sets out the date of registration, which is the date when the company or partnership comes into existence and is authorized to commence business. The Companies Act sets out the specifics that need to be outlined in the memorandum of association and the deed of partnership.

The Continuation of Companies Regulations allow a body corporate, similar in nature to a Maltese limited liability company, which is formed and incorporated or registered under the laws of an approved country or jurisdiction, to request the Registrar of Companies in Malta to be registered as being continued or re-domiciled in Malta under the Companies Act if it is authorized to do so by its constitutive documents and if the laws of its place of registration sanction such a continuation. Equally, limited liability companies registered and incorporated in Malta may continue in, or re-domicile to, an approved jurisdiction outside Malta if the necessary authorization is obtained from the Malta Registrar of Companies. No tax implications arise in Malta upon corporate migration.

#### Forms of entity

##### Requirements for public/private limited liability company

**Capital.** *Public:* The issued share capital may not be less than the authorized minimum, currently EUR 46,587.47, and not less than 25% of the nominal value of each share taken up must be fully paid up at the time of incorporation. Also by allotment, shares must be paid up to at least 25% of their nominal value. *Private:* The issued share capital may not be less than the authorized minimum, currently EUR 1,164.69, and not less than 20% of the nominal value of each share taken up must be fully paid up at the time of incorporation. Also by allotment, shares must be paid up to at least 20% of their nominal value.

**Founders, shareholders.** *Public and private:* To constitute a company, a memorandum of association and voluntary articles of association must be subscribed by at least two persons and a certificate of registration must be issued by the Registrar of Companies. A minimum of two shareholders is required and a private company must limit the number of its shareholders to 50. Nominee shareholders are in principle permitted. There are no requirements on nationality or residence. A private company may also be set up as an exempt private company, provided the memorandum or articles of association restrict the number of persons holding debentures of the company to 50, prohibit any body corporate from holding shares (unless the body corporate is itself an exempt private limited liability company) or debentures of the company, prohibit bodies corporate from acting as directors of the company and prohibit any of the directors from being a party to an arrangement whereby the policy of the

company is capable of being determined by persons other than the directors, members or debenture holders of the company. An exempt private company may, in turn, be set up as a single member company.

**Board of directors.** *Public and private company:* A public company must have at least two directors and a company secretary, and a private company must have at least one director and a company secretary. Corporate entities are permitted as directors for public companies and non-exempt private companies. There are no requirements on nationality or residence.

**Management.** *Public and private:* The management of the company's business is entrusted to the board of directors, although if authorized by the articles of association, the board may delegate certain aspects of its functions and responsibilities to a person(s) appointed as agent(s) or attorney(s) of the company.

**Disclosure.** *Public and private:* On incorporation, companies must file the memorandum and articles of association, if any, with the Registrar of Companies. The memorandum must include whether the company is public or private, the name and residence of each of the subscribers, the name and objects of the company, the address of the registered office in Malta, the name and residence of the first directors and company secretary or secretaries, the manner in which the representation of the company is to be exercised and the name of the first person(s) vested with such representation and the amount of share capital, including further information on the shares.

**Taxes and fees.** *Public and private:* The fee for registration of a commercial partnership depends on the amount of authorized capital or total contributions, as the case may be, ranging from EUR 245 (EUR 210 in electronic format) if the amount does not exceed EUR 1,500, up to a maximum of EUR 2,250 (EUR 1,900 in electronic format) if the amount exceeds EUR 2.5 million. The fee for the registration of an annual return depends on the amount of the authorized share capital and ranges from EUR 100 (EUR 85 in electronic format), if the amount does not exceed EUR 1,500, up to a maximum of EUR 1,400 (EUR 1,200 in electronic format) if the amount exceeds EUR 2.5 million.

There are no taxes chargeable upon the incorporation of a company, an initial contribution of capital to a company (unless the contribution consists of a chargeable capital asset under the Income Tax Act) or upon an increase in the share capital. Stamp duty is chargeable at the rate of 5% or 2% on the amount of consideration, or the real value (whichever is the higher), received pursuant to a transfer of marketable securities.

**Types of shares.** *Public and private:* Different share classes may be issued with preferred, deferred or other special rights or restrictions, whether in regard to dividend, voting, return of capital, etc. The ordinary shares of a company may not be redeemable, and every company must have ordinary shares at all times. Only preference shares that are to be redeemed or are liable to be redeemed by the terms of their issue will be redeemable, and other shares in a company may not be converted into redeemable shares. The company can reduce or increase its issued share capital and is required to keep a register of its shareholders. A company is not entitled to acquire its own shares, unless specific requirements or circumstances set out in the Companies Act are met.

The share capital of a company may be denominated in any currency that is a convertible currency within the meaning assigned to it by the Central Bank of Malta Act. A public company may, with respect to fully paid up shares and if authorized by its memorandum or articles of association, issue warrants entitling the bearer to the shares specified in the warrant, but cannot issue bearer shares as such. Public companies may not restrict the free transferability and may invite the public to subscribe for its shares to obtain a listing on the stock exchange. Private companies must restrict the right to transfer its shares and prohibit any invitation to the public to subscribe for any shares or debentures of the company.

**Control.** *Public and private:* A general meeting takes decisions by passing resolutions either an ordinary resolution or an extraordinary resolution. A majority (more than 50%) is required for an ordinary resolution, unless the memorandum and articles prescribe otherwise. In the case of public companies, extraordinary resolutions must be passed by a member or members having the right to attend and vote at the meeting who hold in the aggregate not less than 75% in nominal value of the shares represented and entitled to vote at the meeting of the company and at least 51% in nominal value of all the shares entitled to vote at the

meeting. For private companies, extraordinary resolutions must be passed by a member or members having the right to attend and vote at the meeting holding in the aggregate not less than 51% in nominal value of the shares represented and entitled to vote at the meeting of the company.

### **Requirements of a partnership *en commandite* and partnership *en nom collectif***

**Capital.** The capital of both types of partnerships consists of contributions made by the partners. Only the capital of a partnership *en commandite* or limited partnership may be divided into shares. Partnerships *en commandite*, the capital of which is divided into shares, are regulated in some respects as limited liability companies and in other respect as ordinary partnerships and, therefore, they are hybrid corporate entities.

**Founders.** A partnership *en nom collectif* may be formed by two or more partners and has its obligations guaranteed by the unlimited and joint and several liability of all the partners. A partnership *en commandite* or limited partnership may be formed by two or more partners and has its obligations guaranteed by the unlimited and joint and several liability of one or more partners, called general partners, and by the liability, limited to the amount, if any, unpaid on the contribution, of one or more partners, called limited partners.

**Management.** The administration and representation of both partnerships vest in each of the general, not limited, partners severally, unless the deed of partnership provides otherwise. At least one of the (general) partners must be an individual or a body corporate, the obligations of which are guaranteed by the unlimited and joint and several liability of one or more of their partners.

**Disclosure.** On incorporation, partnerships must file a deed of partnership with the Registrar of Companies. The deed of partnership must state the name and residence of each of the partners (and, in the case of a partnership *en commandite*, specify which of the partners are general partners and which are limited), the partnership name, the registered office in Malta of the partnership, the objects of the partnership, the contribution of each of the partners (specifying the value of the respective contribution of every partner) and the period, if any, fixed for the duration of the partnership. The accounts of a partnership *en nom collectif* and of a partnership *en commandite*, the capital of which is not divided into shares, are not required to be audited. Partnerships *en commandite*, the capital of which is divided into shares, are required to appoint auditors and to keep accounts in a manner equivalent to a limited liability company and to have their accounts audited in a similar manner.

**Taxes and fees.** The fees for registration are the same as for the limited liability companies. There are no taxes chargeable upon the setting up of a partnership, Stamp duty is chargeable at the rate of 5% or 2% on the amount of consideration, or the real value (whichever is the higher), received pursuant to a transfer of an interest in a partnership.

**Types of shares.** A partnership *en commandite*, the capital of which is divided into shares, may issue shares of different classes.

**Control.** A partnership may only be bound in favor of third parties by a partner acting under the partnership name and having the representation of the partnership. In the case of a partnership *en nom collectif* and unless otherwise provided in the deed of partnership, any alteration or addition to the deed of partnership may only be made with the unanimous consent of the partners. For a partnership *en commandite*, unless the deed of partnership otherwise provides, any change in the deed of partnership that deprive limited partners of any of their rights requires the unanimous consent of all general and limited partners.

### **Other company forms**

There are three other company forms that may be of interest to investors. The European Company (*Societas Europaea* - SE), which is established as a public, limited liability company, requires a minimum capital of EUR 120,000 divided into shares, operates across the EU as a single operation and can transfer its headquarters from one country to another at will. The other forms are the Investment Company with Fixed Share Capital (INVCO), which may take the form of a public company whose business typically consists of investing in funds (mainly securities with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds), and the Investment Company with Variable Share Capital (SICAV), a public or private company whose memorandum limits the

object of the company typically to the collective investment of its funds in securities and in other movable and/or immovable property with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds.

Associations *en participation* and cooperative societies, although not strictly companies, may also be formed under Maltese law. An association *en participation* is formed merely by means of an instrument in writing (a contract), whereby a person ("associate") assigns to another person ("associating party"), for a valuable consideration contributed by the latter, a portion of the profits and losses of a business or of one or more commercial transactions. Such an association does not have a legal personality distinct from that of its members. A cooperative society is defined in the Cooperative Societies Act (CSA) as an autonomous society of persons united voluntarily to meet their economic, social and cultural needs and aspirations, including employment, through a jointly owned and democratically controlled enterprise, in accordance with cooperative principles. The members of a cooperative society enjoy limited liability with regard to the obligations of the cooperative society.

### **Branch of a foreign corporation**

Overseas companies may set up a branch or place of business within Malta in the same manner as a company incorporated in Malta. Except for some restrictions regarding ownership of immovable property in Malta, there are no restrictions imposed on bodies corporate formed outside Malta from carrying on business through branches established and situated in Malta.

Within one month of establishing a branch, the foreign company must deliver various documents to the Registrar of Companies, such as an authentic copy of the statutes of the overseas company, a list of the directors and company secretary of the overseas company and the name, legal form, address, activities and names and addresses of one or more representatives resident in Malta of the branch in Malta.

Once registered as an overseas company, the overseas company must, within 42 days from the end of the accounting period, file copies of its balance sheet, a P&L account and the notes to the accounts.

## **2.2 Regulation of business**

### **Registration and filing requirements**

All businesses must register with the Inland Revenue Department and, if applicable, with the VAT authorities. A business with employees must also register with the social security authorities and the Employment Training Corporation (ETC). Commercial partnerships, including limited liability companies and branches of foreign companies, must register with the Registrar of Companies.

There are no administrative restrictions on licenses or assistance agreements in Malta, provided they comply with relevant legislation, including EU competition law and intellectual property law.

### **Mergers and acquisitions**

Mergers may take place between limited liability companies or between partnerships *en nom collectif* and/or partnerships *en commandite*. A merger of two or more companies may be effected by a merger by acquisition or by a merger by formation of a new company. A merger by acquisition occurs when the acquiring company acquires all the assets and liabilities of the acquired company (or companies), with the acquired company's shareholders receiving in exchange shares in the acquiring company and a cash payment, if any, not exceeding 10% of the nominal value of the shares so issued. A merger by formation of a new company takes place when merging companies contribute all of their assets and liabilities to a new company (Newco) that they established, with shareholders of the merging companies receiving in exchange Newco shares and a cash payment, if any, not exceeding 10% of the nominal value of the shares so issued.

Legislation governing mergers is found in the Companies Act, which includes simplified rules in the case of mergers between a parent company and a wholly owned subsidiary and, to a

lesser extent, in the case of mergers between a parent company and a subsidiary in which the parent company holds at least 90%, but less than all of the subsidiary's issued shares.

Merger activity in Malta is also regulated by the Office for Fair Competition in terms of the Control of Concentrations Regulations, which provides that, unless otherwise provided in the regulations, an acquisition of two or more undertakings must be notified to the Director of the Office for Fair Competition for approval before being implemented if there is a change of control on a lasting basis and: (a) two or more previously independent undertakings merge; or (b) one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, control of one or more undertakings; and (i) the combined aggregate turnover in Malta of the preceding financial year of the undertakings concerned exceeds EUR 2,329,373.40; and (ii) each of the undertakings concerned has a turnover in Malta equivalent to at least 10% of the combined aggregate turnover of the undertakings concerned.

Merger activity in Malta is also subject to the provisions of Council Regulation 139/2004/EC on the control of concentrations between undertakings and to the provisions of Directive 2005/56/EC on cross-border mergers of limited liability companies.

A concentration (*inter alia*, a merger) has a Community dimension:

- 1) Where the combined aggregate worldwide turnover of all of the undertakings concerned is more than EUR 5 billion and the aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover in a single member state; and
- 2) Where the combined aggregate global turnover of the undertakings concerned exceeds EUR 2.5 billion, aggregate global turnover in each of at least three member states is more than EUR 100 million, aggregate turnover in each of these three member states of at least two undertakings is more than EUR 25 million and aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 100 million, unless each achieves more than two-thirds of its aggregate EU-wide turnover within one and the same state.

A concentration that has a Community dimension must be notified to the Commission. In the case of a merger or acquisition, the notification is to be completed jointly by the parties involved.

If a concentration does not have a Community dimension, the affected companies may inform the Commission about it if such a concentration is capable of being reviewed under the national competition laws of at least three member states. If none of the member states concerned objects to the review by the Commission as prescribed in the Council Regulation 139/2004/EC, a concentration will be deemed to have a Community dimension.

### **Monopolies and restraint of trade**

The Office for Fair Competition regulates monopolies and restraints of trade in Malta. The Competition Act deals with monopolies and market dominance by prohibiting abuse or extension of a dominant position by one or more undertakings within Malta or any part of Malta. An undertaking, which alone or in conjunction with others, has a share of at least 40% of the relevant market, in the absence of proof to the contrary, will be deemed to be in a dominant position. The Act also prohibits fixed purchase or selling prices or other trading conditions, limits or controls on production, markets, technical development and investment, sharing markets or sources of supply and dissimilar conditions to equivalent transactions thereby placing one at a competitive disadvantage.

The Treaty on the Functioning of the European Union (TFEU) also applies where any abuse by an undertaking may affect trade between Malta and one or more EU member states and where any agreement between (associations of) undertakings or any concerted practice may appreciably affect trade between Malta and any one or more member states.

## **2.3 Accounting, filing and auditing filing requirements**

The financial statements must comply with the requirements of the Companies Act and the International Accounting Standards (IAS).

The directors of every company are required to prepare for each accounting period a directors' report and annual accounts comprising the balance sheet as at the last day of the accounting period, the profit and loss account, the notes to the accounts and any other financial statements that may be required by generally accepted accounting principles and practice. The annual accounts must give a true and fair view of the company's assets, liabilities, financial position and profit or loss.

An auditor must be appointed at the annual general meeting and must make a report on all annual accounts of the company. The report is prepared in accordance with IAS and must state whether a true and fair view is given of the state of affairs and the profit and loss (P&L) statements. A copy of the annual accounts, together with a copy of the auditors' report and the directors' report, must be submitted to the Registrar.

Small companies may draw up abridged balance sheets and abridged layouts of P&L accounts and abridged notes to the accounts. Small companies are those not exceeding two of the three following criteria: (1) balance sheet total of EUR 2,562,310.74; (2) turnover of EUR 5,124,621.48; and (3) an average number of 50 employees during the accounting period. A parent company may not be treated as a small company unless the group qualifies as a small group, i.e. a group not exceeding two of the three following criteria: (1) aggregate balance sheet total of EUR 2,562,310.74 net or EUR 3,074,772.89 gross; (2) aggregate turnover of EUR 5,124,621.48 net or EUR 6,149,545.77 gross; and (3) an aggregate number of 50 employees.

Private companies not exceeding two of the three following criteria: (1) balance sheet total of EUR 46,587.47; (2) turnover of EUR 93,174.94; and (3) an average number of two employees during the accounting period need not be audited and may draw up abridged balance sheets and abridged layouts of P&L accounts and abridged notes to the accounts.

In addition, banks and financial institutions must comply with the directives issued by the relevant competent authority under the Banking Act and the Financial Institutions Act, and insurance companies must comply with regulations made under the Insurance Business Act.

## 3.0 Business taxation

### 3.1 Overview

Malta does not apply a separate system of corporation tax, making a company chargeable to income tax in Malta (under the Income Tax Act (ITA)) in much the same way as an individual, albeit at a flat rate of 35% (the top marginal rate applicable in respect of individuals). However, due to the application of the full imputation system and the Malta tax payment and refund system, the effective corporate tax rate in Malta may be reduced to approximately 5% (see below).

Limited liability companies and partnerships *en commandite*, the capital of which is divided into shares, are corporate taxable persons for income tax purposes. Partnerships *en nom collectif* or partnerships *en commandite*, the capital of which is not divided into shares, are transparent for tax purposes such that income attributable to such persons is taxed in the hands of some other person or persons, as the case may be (e.g. individual partners).

Malta applies a full imputation system to relieve the economic double taxation otherwise arising on the taxation of dividends received by shareholders from distributions made from the taxed retained earnings of companies. This full imputation system is augmented by a participation exemption regime and a refundable tax credit mechanism that would, depending on the non-Malta residence and/or domicile of the taxpayer, result in a significantly reduced (to zero in certain circumstances) combined overall Malta effective tax rate applicable in respect of chargeable income or gains.

Special tax regimes may be available in respect of, *inter alia*, petroleum profits, profits derived from the business of insurance, shipping and aircraft and profits derived from certain target industries in accordance with the Enterprise Act.

### 3.2 Residence

A company is resident in Malta if it is incorporated in Malta or if management and control of the business of the company is carried out in Malta.

### 3.3 Taxable income and rates

Income tax is levied exclusively in Malta by the central government. Income tax is charged, levied and collected for each year of assessment upon the chargeable income of any person for the year.

A Malta resident and domiciled company is subject to tax in Malta on its worldwide profits, with credit granted for most overseas taxes. Profits include chargeable gains. A company incorporated in Malta is considered both ordinarily resident and domiciled in Malta. A company that is resident or domiciled but not both ordinarily resident and domiciled in Malta is subject to tax in Malta in respect of Malta-source chargeable profits or gains and, to a limited extent, in respect of foreign-source chargeable income (not gains) to the extent such income is remitted to Malta. A company that is not resident or domiciled in Malta is not chargeable to tax in Malta except in respect of Malta-source chargeable income and gains.

Companies are chargeable to tax in Malta at a rate of 35%. However, as noted above, the application of the participation exemption, full imputation system and the 'Malta tax payment and refund system', typically result in an effective Malta tax rate of approximately 0% to 5%. A reduced tax rate of 12% is generally chargeable on income derived pursuant to the transfer of immovable property situated in Malta. The reduced rate is, however, chargeable on the higher of the consideration received or the market value of the transferred property. A withholding tax at reduced rate of 15% may be applicable for certain categories of investment income, but the recipient of the income may elect to receive the investment income without such a deduction.

Certain types of income are exempt from tax under the ITA (e.g. qualifying dividends, capital gains and royalties), as is income accruing to certain categories of persons. In this respect, the income, other than income from immovable property situated in Malta, of a collective investment scheme which has at least 15% of the value of its assets situated outside Malta is

exempt from tax in Malta. The income of a cooperative society is also exempt from Malta tax, but a certain percentage of the cooperative's surplus resulting from its activities must be contributed to a reserve fund and to a Central Cooperative Fund.

### Taxable income defined

A company's total chargeable income derived in a given fiscal year is equivalent to the aggregate amount of income remaining after allowing exemptions and deductions available under the ITA. In practice, the profit shown in the company's financial statements drawn up for that year (in accordance with IFRS) would form the basis on which chargeable income is computed and, accordingly, the basis on which tax is levied, subject to specific adjustments as required and imposed by the relevant tax rules.

Items of chargeable income are enumerated in the ITA and include, in particular, business and trading profits, dividends, premiums, interest, discounts, rents, royalties and gains realized pursuant to the disposal of chargeable assets.

A Malta resident company or a registered branch of a nonresident company is required to keep and allocate distributable profits to five alternative tax accounts, namely:

- The final tax account to which certain items of income that would have been subject to final tax would be allocated;
- The immovable property account to which profits that are derived directly or indirectly from immovable property situated in Malta would be allocated;
- The foreign income account to which foreign-source passive income and gains and/or arm's length income attributable to a permanent establishment or branch situated outside Malta would be allocated;
- The Maltese taxed account to which profits that are not included in the final tax account, the immovable property account or the foreign income account would be allocated; and
- The untaxed account to which profits that are not allocated to other taxed accounts would be allocated. The untaxed account is a "balancing account," containing the difference between the total of the other four tax accounts and the balance of the company's profit and loss account.

By virtue of Malta's full imputation system, tax paid by a company on the profits out of which dividends are distributed is imputed against the tax due by the recipient shareholder (as a refundable tax credit) on the dividends received. Furthermore, a shareholder in receipt of dividends distributed by a company out of profits allocated to its Maltese taxed account or its foreign income account would, by application of Malta's refundable tax credit system, be entitled to claim a refund of Malta tax suffered or paid at the level of the company. The refund is 6/7 of the Malta tax suffered by the company on the profits from which the relevant dividend was distributed. However, the refund is reduced to 5/7 of such Malta tax suffered if the relevant dividend was paid out of profits consisting of passive interest or royalties. The refund is further reduced to 2/3 of the Malta tax paid on the profits from which the relevant dividend was distributed if such profits were allocated to the distributing company's foreign income account and the company claimed double taxation relief in respect thereof.

The combined overall Malta effective tax rate applicable in respect of income or gains derived by a company that are subsequently distributed to its nonresident shareholders that avail themselves of Malta's imputation and refundable tax credit system range from 0% to 10%.

Dividends and gains derived by a Malta resident company or a registered branch of a nonresident company from a participating holding or from the disposal of such holding are exempt from Malta tax altogether by application of Malta's participation exemption regime. As a result, the combined overall Malta effective tax rate applicable in respect of such income and gains is nil. A participating holding exists, *inter alia*, when a Malta company holds directly at least 10% of the equity shares of a nonresident company. The exemption may be inapplicable in respect of income received from a participating holding if the relevant nonresident company is resident in a non-EU member state and if the income of the foreign company is subject to foreign tax at a rate lower than 15%, or if 50% or more of the income is derived from passive interest or royalties.

In addition, royalties and similar income (including any amounts paid for the grant of a license to exercise rights) derived from registered patents in respect of qualifying inventions, whether registered in Malta or elsewhere, are exempt from tax in Malta. The exemption applies regardless of where the underlying R&D was carried out.

### **Deductions**

Expenses may be deducted for tax purposes to the extent they are wholly and exclusively incurred in the production of taxable income. The ITA contains a nonexhaustive list of allowable deductions, including interest on capital employed in acquiring the income, rent, repairs, bad debts, wear and tear allowances, trading losses, expenditure on intellectual property rights, scientific research, promotion, market research, obtaining market information, advertising and participating in fairs and exhibitions. Such expenses generally are deductible in the hands of persons engaged in a trade, business, profession or vocation. The ITA also contains a list of nondeductible expenses, including private expenses, capital expenditure (without prejudice to the wear and tear allowances provided under the ITA), losses that are recoverable under any insurance or contract of indemnity and payments of a voluntary nature.

### **Depreciation**

Depreciation is allowed in the form of wear and tear allowances, albeit only in respect of two classes of assets (namely, industrial buildings or structures and plant and machinery) and provided the assets are used or employed in the production of taxable income. With respect to industrial buildings or structures, an initial allowance amounting to 10% of the cost of the asset is deducted in the year the asset is first brought into use and a 2% deduction on cost is allowed as an annual allowance. With respect to plant and machinery, an annual straight-line allowance is available for a minimum period varying from four to 20 years, depending on the category of asset. There are 18 different categories of plant and machinery on which tax depreciation is allowed, including computers, furniture, ships, lifts, medical equipment, etc.

On the disposal of an asset in respect of which wear and tear allowances would have been claimed, the transferring taxpayer is required to submit a balancing statement setting out the original cost of the asset, the extent of wear and tear allowances claimed and the amount received on disposal. The excess of the amount received on disposal over the original cost of the transferred asset less wear and tear allowances claimed is charged to tax. On the other hand, the shortage of the amount received on disposal relative to the original cost of the transferred asset less wear and tear allowances claimed is available as a further deduction in the year of transfer.

### **Losses**

Relief for trading losses is available by way of deduction. Trading losses may be set off against taxable income derived in the same accounting period. Such losses may also be carried forward indefinitely to be set off against taxable income accruing in subsequent accounting periods. Trading losses may be surrendered to group companies. Unabsorbed wear and tear allowances may be carried forward indefinitely to be set off against trading profits accruing in subsequent accounting periods. Such unabsorbed wear and tear allowances cannot be surrendered to group companies.

Capital losses may be set off against capital gains realized in the current and/or subsequent accounting periods. Such capital losses cannot be surrendered to group companies.

The carryback of losses is not allowed.

## **3.4 Capital gains taxation**

Capital gains realized by a person pursuant to the transfer or deemed transfer of a chargeable asset are taxable under the ITA. Chargeable assets are listed in the ITA as comprising immovable property, securities, business goodwill, business permits copyrights, patents, trademarks, trade names and the beneficial interest in a trust which holds one of the above chargeable assets and an interest in a partnership. Chargeable capital gains are essentially computed by deducting the cost of acquisition of the transferred asset from the consideration received or deemed to have been received upon the transfer. A capital loss is computed in the same manner as a capital gain.

Chargeable capital gains are aggregated to a taxpayer's other income and are charged to tax at a flat rate of 35% in respect of companies. However, tax is payable at a reduced rate of 12% on the consideration received or the market value, whichever is higher, of transferred immovable property situated in Malta.

A participation exemption is available in respect of capital gains derived from the disposal of a participating holding. Additionally, an exemption from tax on capital gains is available, *inter alia*, upon an intragroup transfer of chargeable assets, transfer of chargeable assets upon a restructuring of holdings (e.g. mergers, demergers, amalgamations and reorganizations) within a group of companies, a transfer of securities listed on the Malta stock exchange or a transfer by a nonresident person (i.e. a person that is not owned and controlled by, directly or indirectly, or acting on behalf of an individual or individuals who are ordinarily resident and domiciled in Malta) of securities in a Malta company or an interest in a partnership, the assets of which do not consist directly or indirectly, of immovable property situated in Malta or any real rights thereon. Persons not ordinarily resident and domiciled in Malta are exempt from Malta tax on capital gains having a foreign source.

Additionally, persons transferring their residence and/or domicile to Malta and companies resulting from a merger, are entitled (but not obliged), only if not resident or domiciled in Malta before their transfer of residence and/or domicile to Malta, to claim a step-up in the tax base cost of assets situated outside Malta. Such persons may opt to, for Malta tax purposes, revalue the assets from historic costs to fair market value at the time of shift of residence/domicile to Malta/merger. The revaluation will, *inter alia*, apply for the purpose of determining gains on a subsequent disposal of the assets.

### 3.5 Double taxation relief

#### Types of relief

Tax payable in Malta may be reduced by a claim for relief of foreign tax paid or deemed to have been paid, as the case may be.

Treaty and unilateral relief are available in the form of an ordinary credit against the Malta tax liability of a person deriving foreign-source income that was subject to tax similar to the income tax in Malta. Additionally, relief on a multi-tier basis may be available in case of unilateral relief for any underlying (foreign or Maltese) taxes suffered on income distributed as a dividend.

Malta also grants a foreign tax credit equal to 25% of the net income allocated to the foreign income account of a company. The flat rate foreign tax credit is available when no other form of double taxation relief provided for under the ITA is available (e.g. no actual foreign taxes were suffered or paid on the income stream in question) and provided the income is to be allocated to the foreign income account.

#### Tax treaties

Malta has a broad tax treaty network.

Malta Tax Treaty Network			
Albania	France	Lebanon	Serbia
Australia	Georgia	Libya	Singapore
Austria	Germany	Lithuania	Slovakia
Barbados	Greece	Luxembourg	Slovenia
Belgium	Hungary	Malaysia	South Africa
Bulgaria	Iceland	Montenegro	Spain
Canada	India	Morocco	Sweden
China	Ireland	Netherlands	Syria
Croatia	Isle of Man	Norway	Tunisia

Cyprus	Italy	Pakistan	United Arab Emirates
Czech Republic	Jersey	Poland	United Kingdom
Denmark	Jordan	Portugal	United States
Egypt	Korea	Qatar	
Estonia	Kuwait	Romania	
Finland	Latvia	San Marino	

### 3.6 Anti-avoidance

#### Transfer pricing

Malta does not have specific transfer pricing legislation.

#### Thin capitalization

Malta does not have thin capitalization legislation.

#### Controlled foreign companies

Malta does not have CFC legislation.

#### General anti-avoidance rule

General anti-avoidance rules included in the ITA provide that the Commissioner of Inland Revenue may, for tax purposes, disregard any artificial, fictitious or abandoned scheme that reduces the amount of tax payable by a taxpayer. Additionally, where a taxpayer obtains an advantage as a result of a scheme, the sole or main purpose of which is to obtain an advantage that has the effect of avoiding, reducing or postponing liability to tax, or of obtaining any refund or set off of tax, the Commissioner of Inland Revenue may determine the liability to tax or the entitlement to a refund or setoff of tax of such person in such manner and in such amount as may be necessary to nullify or modify the scheme and the consequent advantage.

### 3.7 Administration

#### Tax year

The default tax year end for a company is 31 December, i.e. the calendar year. A company may, however, apply to the Commissioner of Inland Revenue to adopt a financial year end with an ending other than 31 December.

#### Filing and payment

Companies are required to pay provisional tax computed by reference to the amount of tax chargeable in the prior year. The provisional tax is payable in three installments (20% by 30 April, 30% by 31 August and 50% by 21 December). Provisional tax payments are on account of the final tax liability of the paying company for the relevant tax year.

A tax return must be filed within nine months from the financial year end or 31 March of the following year, whichever is later. Any tax balance due (pursuant to the set off of provisional tax paid) must be paid by the date the tax return is due. On the other hand, any refund due by the Malta tax authorities is payable within six months from the return due date or within one year from the date the tax return is submitted if the tax return is not submitted by the due date. Interest is payable at a rate of 1% per month or part thereof on any tax balance that remains unpaid or otherwise on amounts not refunded by the tax authorities.

Penalties are imposed for failure to submit a tax return, for submitting an incorrect return or making an omission in a tax return.

#### Consolidated returns

Malta's Income Tax Act does not allow a group of companies to file a consolidated tax return. However, tax losses incurred in a trade or business may be surrendered between group companies, and intragroup transfers of chargeable assets are not taxed, resulting in an effective deferral of tax.

For the purpose of the application of the relevant group relief provisions, two Malta resident companies will be deemed to be members of a group of companies if one is the 51% subsidiary of the other or both are 51% subsidiaries of a third company resident for tax purposes in Malta throughout the year for which the relief is claimed. Surrendered trading losses may be set off against trading profits and chargeable gains of the claimant company. Unabsorbed surrendered losses may be carried forward by the claimant company as if the relevant losses were incurred in its own trade.

### **Statute of limitations**

The Commissioner of Inland Revenue can make an assessment no later than five years from the end of the year in which the tax return for the relevant year of assessment was furnished or for the year in which an election not to submit a return has been made under Maltese law. There is no statute of limitations where a taxpayer submits a return that does not include all material facts relevant to the determination of its income and allowable deductions, or if tax avoidance/evasion or gross negligence is present. Action for the payment of tax or additional tax may be taken by the Commissioner for a period of eight years from which the tax or additional tax becomes due. In cases where an assessment has been made, the eight-year period starts from the date the assessment became final and conclusive.

### **Tax authorities**

The Inland Revenue is responsible for the administration of the Income Tax and Capital Transfer Duty Acts and the enforcement of social security contributions under the direction of the Ministry of Finance.

### **Rulings**

An application to the Commissioner of Inland Revenue may be made for an advance ruling on the tax treatment of certain transactions, *inter alia*, the tax treatment of any transaction that involves international business.

A ruling application must be made in writing and contain all material particulars of the transactions to be effected. The Commissioner will issue a written request to the applicant to furnish further particulars necessary for the purposes of enabling a decision on an application.

A ruling will be notified within 30 days of receiving the application or further particulars as requested by the Commissioner. A ruling is binding for five years; however where, subsequent to the issuance of the ruling, relevant changes are made to statutory provisions in the law, the ruling will remain binding for only two years. Subject to certain conditions, at the option of the applicant a ruling may be renewed for an additional five years.

## 4.0 Withholding taxes

### 4.1 Dividends

Although Malta generally does not levy withholding tax on dividend payments, a company distributing dividends out of profits allocated to its untaxed account must withhold tax at a 15% rate if the dividend is distributed to (1) an individual resident in Malta; or (2) a nonresident that is owned and controlled by, directly or indirectly, or that acts on behalf of, an individual who is ordinarily resident and domiciled in Malta; or (3) a trustee where the trust beneficiaries are persons referred to in (1) or (2).

Malta has implemented the requirements of the EC Parent-Subsidiary Directive -- under the directive, domestic withholding tax will be reduced to zero if dividends are distributed to a qualifying EU shareholder that has held at least 10% of the subsidiary for at least 12 months.

### 4.2 Interest

Typically, there is no withholding tax on interest paid to nonresidents. Tax is only withheld, at a rate of 35%, on interest paid to (1) nonresidents owned and controlled by, directly or indirectly, or acting on behalf of an individual or individuals who are ordinarily resident and domiciled in Malta; and (2) nonresidents engaged in a trade or business in Malta through a PE situated herein to which the debt claim is effectively connected.

Malta has implemented the requirements of the Interest and Royalties Directive, which exempts from withholding taxes payments of royalties and interest between companies in different EU member states in prescribed circumstances.

### 4.3 Royalties

Typically, there is no withholding tax on royalties paid to nonresidents. Tax is only withheld, at the rate of 35%, on royalties paid to: (1) nonresidents owned and controlled by, directly or indirectly, or acting on behalf of an individual or individuals who are ordinarily resident and domiciled in Malta; and (2) nonresidents engaged in a trade or business in Malta through a PE situated herein to which the royalties are effectively connected.

Malta has implemented the requirements of the Interest and Royalties Directive, which exempts from withholding taxes payments of royalties and interest between companies in different EU member states in prescribed circumstances.

### 4.4 Branch remittance tax

Malta does not levy a branch remittance tax.

### 4.5 Wage tax/social security contributions

Income tax is withheld from salaries under the Final Settlement System. In addition, the employer is liable for the payment of social security contributions on its own behalf and on behalf of the employee. The tax rate is at a general rate of 10%, subject to a minimum and maximum tax payment. In 2011, the maximum tax payable is EUR 35.39 per week. The amount of social security contribution paid by the employer on behalf of the employee is deductible from the wages or any other remuneration of that person.

# 5.0 Indirect taxes

## 5.1 Value added tax

VAT is levied, with certain exceptions, on the supply of goods and services in Malta, the intra-Community acquisition of goods in Malta by VAT-registered persons and the import of goods into Malta from outside the EU.

The standard VAT rate is 18%, with the reduced rates of 7% to the supply of accommodation and of 5% applying to certain supplies, including electricity, confectionery, medical accessories and printed matter, items for the exclusive use of the disabled and works of art, collectors' items and antiques. A 0% rate (an exemption with the right to deduct input VAT) is levied on specified supplies, including the export of goods, the supply of sea vessels and aircraft and related transactions, gold, food (except in the course of catering), pharmaceutical goods, international transport services and supplies related to international goods traffic. Certain transactions are exempt (without the right to deduct input VAT), including the transfer of immovable property and (subject to certain exemptions) the letting of immovable property, insurance and certain banking transactions, cultural and religious services, services by nonprofit organizations to their members, lotteries and gaming, postal services, certain health and education services, public radio and television broadcasting and the supply of water by a public authority.

A person who, in the course of a trade or profession, makes taxable and/or exempt-with-credit supplies of goods and services in Malta is required to register for VAT in Malta (standard registration) and to charge Malta VAT, where applicable, at the relevant rates, subject to the entitlement to recover input VAT incurred for the purpose of the supplies. An exception to the registration requirement applies to the persons making taxable or zero-rated supplies if the turnover thereof does not exceed EUR 7,000 per calendar year. Input VAT is deductible to the extent it relates to goods and services used by taxable persons for the purpose of carrying out taxable (including zero-rated) transactions, or transactions carried out outside Malta which, if carried out in Malta, would be taxable. Qualifying taxable persons (based on the level of turnover) may opt to register as a "small undertaking," in which case no VAT is chargeable on supplies made in Malta and input VAT incurred cannot be recovered.

VAT-registered persons (standard registration) are typically allocated a three-calendar-month tax period and must file a VAT return for every tax period. Shorter or longer tax periods may be granted.

Administrative penalties are imposed for incorrect VAT returns (20% of the total of the excess, if any, of the correct amount of output tax over the output tax declared in the return and the excess if any of the declared amounts of input tax over the correct amount of deductions, which is reduced to 10% where a voluntary disclosure of the error is made); failure to file VAT returns on time (the higher of EUR 20 or 1% of the excess if any, of the output tax over the input tax for every month or part thereof that elapses from the date by which the VAT return should have been filed in accordance with the VAT Act and the date it is submitted to the Commissioner); and failure to register for VAT (the higher of EUR 20 or 1% of the excess if any, of the output tax over the input tax for the first tax period following registration). Interest at a rate of 0.75% per month or part thereof is due on any VAT that is not paid by the date on which it becomes payable.

## 5.2 Capital tax

Malta does not levy capital tax (but see below under Transfer tax).

## 5.3 Real estate tax

There is no real property tax, but tax is generally due on gains derived from the transfer of immovable property.

## **5.4 Transfer tax**

There is no transfer tax, but see below under Stamp duty.

## **5.5 Stamp duty**

Duty is chargeable pursuant to the provisions of the Duty on Documents and Transfers Act and is generally levied on documents evidencing transfers of immovable property, marketable securities or an interest in a partnership. A document is subject to duty if it is executed in Malta or, in certain circumstances, if it is executed outside Malta and is used in Malta. Duty is chargeable at the rate of 5% of the higher of the consideration and the real value upon a transfer of immovable property. Duty is chargeable at a rate of 2% of the higher of the consideration and the real value upon a transfer of marketable securities or an interest in a partnership, although a 5% rate applies to transfers of marketable securities in a company or of an interest in a partnership where 75% or more of its assets consist of immovable property. Duty is also chargeable on certain specified documents, such as policies of insurance.

Exemptions may apply in respect of certain transfers, including the transfer of securities listed on the Malta stock exchange, intragroup transfers and transfers of securities in or by a company that has, or intends to have, business interests to the extent of more than 90% outside Malta.

## **5.6 Customs and excise duties**

Goods brought into Malta from outside the EU and released into free circulation in Malta are subject to customs duty at the relevant rates in accordance with the EC Common Customs Tariff and based on an international harmonized classification system. The EC has preferential trade agreements with certain countries that result in the rates being reduced or eliminated. Various procedures (customs duty suspension regimes) are available to relieve importers from the payment of duty, e.g. inward processing relief from customs duties is available when goods are imported for processing and re-exported, while outward processing relief may be available upon application in respect of goods that are exported for repair/processing and re-imported into the EU. No customs duty is due in connection with the movement of goods between EU member states.

Excise duties are imposed on particular classes of goods, namely, alcohol, tobacco, energy products and mobile telephony. In certain cases, excise duty may be relieved or refunded (e.g. when goods are exported). A registration tax (excise duty) is payable on the registration of motor vehicles, at rates that vary according to the prescribed category of motor vehicle.

## **5.7 Environmental taxes**

An environment tax (eco-contribution) is payable on certain products such as plastic, metal and glass containers, batteries and household appliances, as well as on accommodation provided in premises that are required to be licensed under the Malta Travel and Tourism Services Act.

## **5.8 Other taxes**

None.

## 6.0 Taxes on individuals

Malta does not operate a separate system of taxation for individuals and corporate entities. As such, individuals, in a similar manner to corporate entities, are taxed under the ITA and the Income Management Tax Act.

Employed individuals (as well as the self-employed) must make social security contributions.

There is no net wealth tax, real estate tax or inheritance and gift taxes, but individuals are subject to a capital gains tax and stamp duty.

### 6.1 Residence

The Malta tax treatment of an individual depends on his/her tax residence status in Malta, and, more specifically, whether the individual is resident, ordinarily resident and/or domiciled in Malta.

An individual is resident in Malta if he/she permanently resides in Malta. An individual who temporarily resides in Malta and who is not of Maltese origin is not domiciled in Malta for tax purposes.

### 6.2 Taxable income and rates

#### Taxable income

An individual who is ordinarily resident and domiciled in Malta is subject to income tax in Malta on worldwide income and chargeable gains. An individual resident in Malta who is either not ordinarily resident or not domiciled in Malta is taxable on income and chargeable gains arising in Malta and on foreign income (but not foreign capital gains) received in Malta

Taxable income for individuals is defined in the same way as for businesses. The total taxable income is the aggregate amount of income of a person (after allowing for exemptions and allowable deductions) including gains or profits derived from a trade or business, profession or vocation, employment or office, dividends, interest or discounts, pensions, annuities or annual payments, rents, royalties, premiums and any other profits arising from property and chargeable capital gains.

Employment income includes fringe benefits, such as the provision of assets (e.g. accommodation) and benefits of using an automobile. Directors' income is taxed as employment income. Payments relating to the termination of employment are not taxable as they do not constitute compensation for services rendered. Gifts of a personal nature and capital sums received in respect of commutation of pension, retirement or death gratuity are not taxable.

Gains on the transfer of capital assets (capital assets being (i) immovable property, (ii) securities, business, goodwill, business permits, copyrights, patents, trademarks and trade names; (iii) beneficial interests in trusts that hold property referred to in (i) or (ii); or (iv) interest in a partnership) are aggregated with a person's other income and the total of income and capital gains is charged to income tax. A non-resident is not subject to tax on gains or profits realized on a disposal of shares or securities in a company or an interest in a partnership, unless the company's assets consist wholly or principally of immovable property situated in Malta or any real rights thereon.

Exempt income for individuals includes certain capital gains, certain pensions, scholarships and child maintenance.

#### Deductions and reliefs

Individuals may only deduct expenses from business income incurred wholly and exclusively in the production of the income, including payments of interest, rents, repairs and renewals, bad debts, sales promotion expenditure, patent expenditure spread over the life of the patent, capital expenditure on intellectual property rights spread equally over three years and certain pre-trading expenditure. In general, individuals may not deduct expenses related to income from capital (except certain expenses from rental income on immovable property that does not constitute a business) or employment.

With respect to employment income, individuals may deduct expenses incurred wholly and exclusively and necessarily in the performance of the duties of the employment or office, and the necessity for the expense must be dictated by the employment itself. There are no personal allowances or credits, and no deductions for medical costs and gifts. However, subject to conditions, deductions may be permitted in respect of alimony payments, school fees, childcare fees, elderly home fees and sports fees.

Generally, interest paid on borrowed money generally is deductible from income generated by the application of the borrowed funds.

As noted above, Malta operates a full imputation system for residents and nonresidents, under which tax paid by a company in Malta can be credited at the level of the shareholder on distribution of dividends. The tax credit is equivalent to the tax paid by the company on the profits from which the dividends are distributed. Excess imputation tax credits are refundable where the individual shareholder is liable to tax in Malta at a rate that is lower than the company rate of tax.

Treaty relief and unilateral relief are available to avoid the double taxation of foreign-source income.

### **Rates**

Malta has a progressive income tax rate schedule for individuals. Income tax is also imposed on capital gains, for which different rates may apply, depending on the type of transfer. The rates for 2011 are: 0% on taxable income up to EUR 8,500; 15% on EUR 8,501 to EUR 14,500; 25% on EUR 14,501 to EUR 19,500; and 35% on more than EUR 19,501.

Nonresident individuals are subject to Maltese income tax on income and capital gains arising in Malta at the following rates: 0% on taxable income up to EUR 700; 20% on EUR 701 to EUR 3,100; 30% on EUR 3,101 to EUR 7,800; and 35% on income exceeding EUR 7800.

When an individual transfers immovable property situated in Malta after 22 November 2005, tax is payable at the flat rate of: 12% on the higher of the market value or the consideration received for the transfer less brokerage fees; 7% on the consideration received, if the property was inherited before 25 November 1992; or 12% on the gain, less any brokerage fees paid by the transferor, and the cost of acquisition, if the property was inherited after 24 November 1992 and before 25 November 2003 or acquired by the transferor by title of donation more than five years before the date of transfer.

A 15% withholding tax is imposed on certain types of investment income (e.g. bank interest paid to Maltese residents) and on profits distributed to a resident individual shareholder out of untaxed income. The recipient of the investment income has the option to receive the income without a deduction of tax and to declare the investment income in the tax return. 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.

A 25% tax must be deducted at source if taxable income, other than dividends, interest and royalties that is not subject to withholding tax in Malta, is paid to a nonresident individual. Nonresidents are exempt from tax in Malta on interest and royalties only if they are not connected to a PE of the nonresident in Malta.

A special reduced flat tax rate of 15% applies to expatriates holding an employment under a qualifying contract of employment in an eligible office in Malta. The regime focuses on a narrow range of industries comprising the banking, financial, investment and insurance sectors.

### **6.3 Inheritance and gift tax**

There is no inheritance or gift tax in Malta, but a stamp duty may apply and capital gains tax may apply on the transfer of inherited real property.

### **6.4 Net wealth tax**

There is no net wealth tax in Malta.

## 6.5 Real property tax

There is no real property tax in Malta, but capital gains tax must be paid on the transfer of real property.

## 6.6 Social security contributions

Social security is compulsory for all persons gainfully occupied in Malta between the ages of 16 to 65, including nonresident persons working in Malta. A social security contribution generally amounts to a 10% of the amount of remuneration and is payable by both the employer and the employee. This is subject to minimum and maximum tax payment. In 2011, the maximum tax payable is EUR 35.39 per week. The amount of social security contribution paid by the employer on behalf of the employee is deductible from the remuneration of that person.

## 6.7 Other taxes

Stamp duty is generally levied on documents evidencing transfers of immovable property at a rate of 5% of the higher of the consideration and the real value (with reduced rates applicable to dwelling houses and transfers *causa mortis*), and upon a transfer of marketable securities or an interest in a partnership at a rate of 2% of the higher of the consideration and the real value, although a 5% rate applies to transfers of marketable securities in a company or an interest in a partnership where 75% or more of its assets consists of immovable property or any real rights thereon. Exemptions are available.

## 6.8 Compliance

The tax year is the calendar year.

Spouses must file a joint tax return and are jointly liable for taxes due.

Individuals are taxed on a preceding year basis. Tax on employment income is withheld at source by the employer. Three provisional tax payments must be made before 30 April, 31 August and 21 December, respectively, of each basis year (except for income on which tax was withheld at source), with the balance paid by 30 June of the year of assessment.

The 25% tax withheld on certain payments to nonresidents (see above) must be paid to the Inland Revenue within 30 days and is fully credited to the nonresident taxpayer.

# 7.0 Labor environment

## 7.1 Employee rights and remuneration

The Constitution of Malta contains the basic principles of employee rights, including the right of all citizens to work, the establishment of a maximum daily working hours, a weekly rest day, a minimum working age, gender equality and contributions to national insurance. Employment may be for a fixed term or for an indefinite term and on a “whole-time” basis (40 hours), full-time on reduced hours (between 20 and 40 hours) or part-time basis (less than 20 hours).

### Working hours

Malta has 14 paid public holidays a year. The work week is 40 hours with a maximum weekly work time for all sectors of 48 hours, although actual work hours may vary by sector and are governed by collective agreements and by the Government Wages Council, specific to each industry. An employee is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period, a rest break where the work day is longer than six hours and a minimum uninterrupted weekly rest period of 24 hours for each seven-day period.

## 7.2 Wages and benefits

The minimum wage in Malta depends on the category of work and may change according to cost of living increases determined by the annual budget. The National Minimum Wage National Standard Order lists the minimum wage applicable to certain age groups. The minimum weekly wage in 2011 for individuals aged over 18 years is EUR 153.45.

### Pensions

A person is entitled to a retirement pension at one of the rates specified in the Social Security Act. A person who is not entitled to a service pension payable by or on behalf of his/her employer in respect of past services is entitled to a National Minimum Pension, the highest rate of which will be equivalent to 4/5 of the national minimum wage in the case of a married person who is supporting his/her spouse, and 2/3 for any other person.

### Social insurance

The Social Security Act establishes rules for the national social security system. All employers are required to contribute to a compulsory national social security system. Contributions are generally equivalent to one-tenth of an employee's gross salary up to a maximum of EUR 35.39 (in year 2011) per week. The employer must pay the full contribution on behalf of the employed person. The amount of any contribution paid by the employer on behalf of the employed person is deductible from the wages of that person.

### Other benefits

Fringe benefits provided by employers, such as transport allowances and canteen facilities, vary and normally depend on agreements reached with unions.

A full-time employee is entitled to paid annual leave of at least 192 hours. An employee may apply for maternity leave for an uninterrupted period of 14 weeks.

## 7.3 Termination of employment

According to the Employment and Industrial Relations Act, the first six months of an employment under a contract of service are probationary unless otherwise agreed by both parties. During the probationary period, the employment may be terminated at will by either party without assigning any reason. A contract of service for an indefinite time may be terminated by the employee by giving notice without any reason and by the employer only on grounds of redundancy or, in case of sufficient cause for such dismissal or abandonment of service, without giving notice. The time period for the notice of termination of employment by the employer or by the employee under a contract of service for an indefinite time is regulated by the Act. An employee under a contract of service for an indefinite time that fails to give notice is liable to pay the employer a sum equal to half the wages that would be payable in

respect of the period of notice. If the employer fails to give notice, it is liable to pay the employee a sum equal to the wages that would be payable in respect of the period of notice.

## **7.4 Labor-management relations**

All employees may be represented at work by a workers' or trade union. The responsibilities, privileges and obligations of the union are regulated in the Employment and Industrial Relations Act.

Labor disputes can be settled voluntarily by mediation and conciliation, or by a tribunal determined by the Industrial Tribunal. A conciliation panel is made up of not less than five persons. The Industrial Tribunal is a judicial organization, whose rulings are binding and not subject to appeal for a minimum stipulated period of 12 months.

The Employment Relations Board makes recommendations and advises the government on a wide range of issues concerning labor legislation and the national minimum conditions of employment. An Employment Commission is established under the Constitution to ensure that, in respect of employment, no distinction, exclusion or preference that is not justifiable in a democratic society is made or given in favor or against any person by reason of his political opinion.

Strikes and lockouts are permissible when they concern labor relations and when there are no impeding obligations such as to maintain peaceful labor relations. Strikes can be prohibited by law for specific sectors. Employers are not obliged to pay wages for the duration of strikes.

## **7.5 Employment of foreigners**

A work permit issued by the Director of Labor is required for all non-EU foreign nationals wishing to work in Malta. The following requirements must be met to obtain a permit:

- An offer of employment from an employer in Malta;
- The applicant must possess a specialist skill or qualification of which there is a shortage in Malta;
- There must be a significant demand in the relevant field; and
- The applicant must submit a valid passport, a certificate of good conduct and a letter of employment including a full job description by the prospective employer.

Work permits are issued for one year, but there are cases in which a foreign investor in manufacturing or financial sectors, holding a substantial shareholding (40%), may be granted a work permit on an indefinite basis.

## 8.0 Deloitte International Tax Source

Professionals of the member firms of Deloitte Touche Tohmatsu Limited have created the Deloitte International Tax Source (DITS), an online resource that assists multinational companies in operating globally, placing up-to-date worldwide tax rates and other crucial tax material within easy reach 24/7.

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## 9.0 Office locations

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