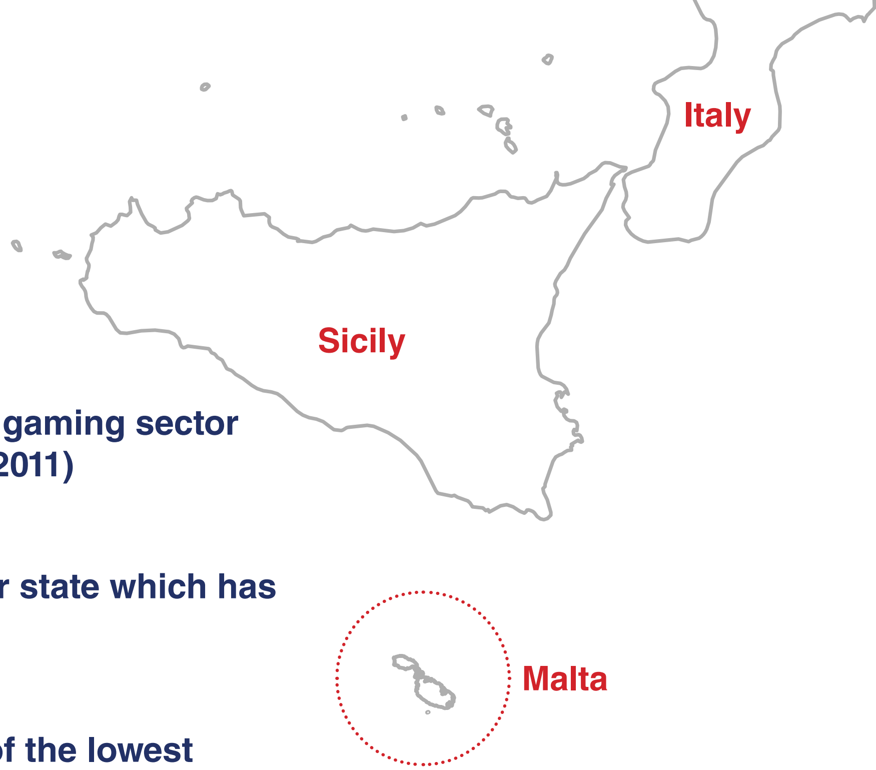
KSi Malta

The Maltese Tax System

Morison KSi
Independent member

Malta



Malta has the largest online gaming sector in Europe (EC Green Paper 2011)

Malta is the only EU member state which has a full imputation system

Malta offers the possibility of the lowest effective tax rate in Europe, at 5%

Malta has over 70 double tax treaties, with several others projected to be finalised in the coming months

Malta offers a very advantageous participation exemption regime

Malta offers various tax credits & notional tax deductions

How does it work?

The corporate income tax rate for a company incorporated in Malta is 35%. However, the effective tax rate incurred by a registered foreign shareholder could be lowered significantly if a refund is claimed upon the distribution of dividends (or bonus shares) by such company.

As from 1 January 2017, the effective tax rate can be reduced further when entities opt (on an annual basis) to deduct a notional amount of interest that is determined with reference to the value of the company's risk capital, which is primarily made up of its equity. This has to be accepted by the shareholders of the company given that in turn they would be deemed to have earned an equivalent amount of notional interest income. In the hands of non-residents, such income would not be chargeable to tax.

The rate of the tax refund which could be claimed by a shareholder could vary due to factors such as:

- the nature of the underlying profits out of which the dividend has been distributed

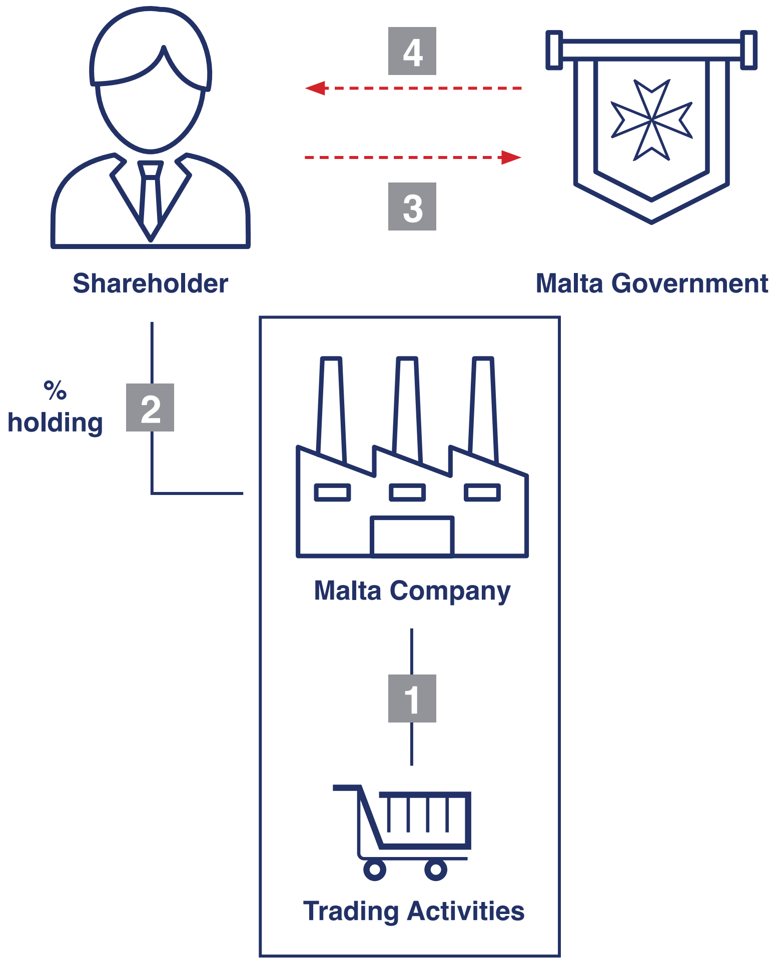
  and

- the application of double taxation relief by the Maltese distributing company on the profits distributed

Generally, a shareholder would become entitled to 6/7ths of the tax due in Malta originally suffered by the Maltese company on the profits being distributed as dividends.

When the dividends being distributed are derived from profits consisting of passive interest or royalties, the refund is reduced to 5/7ths of the tax due in Malta. Distribution of dividends derived from profits which would have been allocated to the Foreign Income Account and in respect of which the company would have claimed double taxation relief, would entitle the shareholder to a 2/3rds refund of the tax due in Malta. A 100% tax refund is also possible upon the distribution of dividends consisting of income derived from particular investment.

How does it work?



1

The Maltese company raises income from its commercial activities and initially suffers 35% tax on these profits

2

The Maltese company distributes the remaining profits (i.e. the 65%) to the direct shareholder as dividends

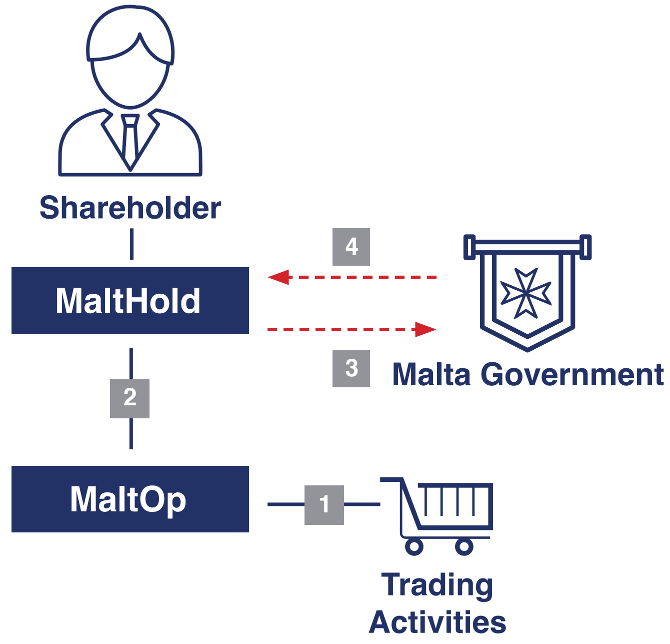
3

The shareholder files a claim for tax refund to the Maltese tax authorities requesting a refund on part of the 35% initially suffered either of 6/7ths, 5/7ths, 2/3rds or 100%

4

The Maltese tax authorities are bound to pay the refund within a reasonable timeframe by a bank transfer to the shareholder

The Two-Tier structure



A double-tier structure converts the tax refund which would be taxable as other income in all countries into dividends. Although highly convenient for trading situations, such a structure can also be applied to investment, rental, intellectual property and captive insurance operations.

The above scenario incorporates a two-tier structure whereby MaltHold (essentially a passive Holding company) holds shares in MaltOp (a trading company). By having a two-tier structure in Malta, the 6/7ths tax refund is not received by the foreign shareholder but rather by MaltHold.

This ensures that both the profits originally gained by MaltOp and distributed to MaltHold and the tax refund received by MaltHold will be parked in Malta and not taxable at the shareholders' personal level.

The Participation Exemption

Generally double taxation treaties provide that any gains derived by a Maltese company from the sale of shares in a subsidiary are taxable in Malta. However, the participation exemption regime grants a 100% exemption to companies registered in Malta which such capital gains from the disposal of a participating holding.

The Maltese Participation Exemption makes the possibility of a 0% tax rate a reality

More importantly, the participation exemption regime exempts from tax any dividends derived by a Maltese registered company from a foreign participating holding.

The tests which must be satisfied in order for the participation exemption to apply:

1 The dividends or the capital gains must be derived from a participating holding.

A participating holding involves holding of equity shares by a Maltese registered company in a resident / non-resident company in respect of which at least one of the following conditions is satisfied:

- the Maltese registered company owns at least 5% of the equity shares
- the Maltese registered company has the option to acquire the remaining balance of the equity shares
- the investment of the Maltese registered company amounts to €1,164,700 or more and is kept for an uninterrupted period of at least 183 days
- the Maltese registered company is entitled to first refusal in the event of the proposed disposal, redemption or cancellation of the remaining balance of the equity shares
- the Maltese registered company is entitled to sit on the Board

or

- the holding of shares by the Maltese registered company is for the furtherance of its business and the shares are not held for trading purposes

Participations in certain types of partnerships may also be deemed to be a 'participating holding'.

2 The second test for the application of the participation exemption in respect of dividend income (not in respect of capital gains) requires the satisfaction of any of the following conditions:

- the participating holding is resident or incorporated in an EU member state

or

- the participating holding is subject to tax at a rate of at least 15%

or

- the participating holding has 50% or less of its income derived from passive interest or royalties

If none of the above three conditions are met, then the participation exemption in respect of dividend income applies only as long as the investment in the non-resident company is not held as a portfolio investment and the passive interest or royalties derived by the latter company would have been subject to tax at a rate of at least 5%.

Income from foreign permanent establishments is also exempt in Malta.

Resident non-Domiciled Companies

Maltese law provides for the possibility of companies being incorporated outside Malta but managed and controlled here in Malta (which in turn are to be deemed fiscally resident in Malta) to be taxed only on a source and on remittance basis. This means that such company will only be taxed in the following instances (obviously when Maltese tax triggers in, the tax refund possibilities outlined above would still be possible):

- on income and capital gains arising in Malta

and

- on foreign income (excluding capital gains) which are remitted into a Maltese bank account

Therefore such companies do not incur any Maltese tax on foreign income which is not remitted to Malta or on any foreign capital gains (irrespective if remitted to Malta or not

The use of resident non-domiciled companies could be very useful in particular for the following activities:

- for companies with a considerable cash balance for investment purposes
- for loan and financing operations (under Maltese legislation no transfer pricing regulations exist with respect to inter-company loans)
- for companies deriving income from royalties

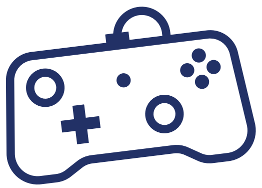
Uses of Maltese companies

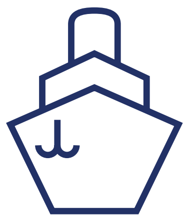
1. MALTA INTELLECTUAL PROPERTY (IP) COMPANY

Maltese IP companies deriving royalty income are subject to numerous tax benefits. Firstly, if the royalty income in question is of an active nature (derived directly or indirectly from trade) this would be subject to an effective corporate tax rate of only 5%. On the other hand, if the royalty income is of a passive nature (not derived directly or indirectly from trade) this would be subject to an effective corporate tax rate ranging between 0% and 10%.

2. MALTA IGAMING COMPANY

Besides experiencing an effective corporate tax rate of only 5% (the lowest in Europe), Maltese iGaming and iBetting companies also enjoy very low gaming taxes and license fees. International statistics continuously show that Malta remains the number one iGaming jurisdiction in Europe. Such status was only possible because Malta ensures to offer the right blend between low cost incentives and guaranteeing high EU standard recognition at the same time.





3. MALTA SHIPPING COMPANY

The use of Maltese shipping companies for flagging or re-flagging ships or yachts is subject to considerable fiscal and non-fiscal benefits.

As of 1 April 2018, Malta finally re-introduced the Tonnage Tax Scheme, strengthening our tonnage tax principles, whilst also promoting the registration of ships in Malta and Europe. The scheme provides that:

- Any income, profits or gains which derive from shipping activities carried out by a licensed shipping organisation may be exempt from tax, provided that the registration fees and tonnage taxes are duly paid
- A flat rate will be paid in accordance to net tons, where the regime specifies the standard rates applicable
- The inapplicability of the Social Security Act, provided that those involved are operating as officers of employees with a licensed shipping organisation, and are not resident in Malta, and
- No duty is chargeable with respect to the sale or other transfer of a tonnage tax ship or any share thereof.

4. MALTA AVIATION COMPANY

The following are among the various fiscal incentives available in this sector one can find that:

- income derived by non-Maltese resident operators from the ownership, leasing or operation of aircrafts or aircraft engines used in international aviation business, such as transport of passengers or goods, will not be taxed in Malta unless such income is actually received in a Maltese bank account. This will apply despite the fact that the aircraft may be registered and/or is operated in/from Malta
- should any Maltese tax be incurred, eventually should any tax be due in Malta, this may be lowered to an effective tax rate of 5%, vià our tax refund system
- Malta offers a considerable cash flow advantage by manifesting accelerated tax depreciation rates for the aviation sector (6 years for the aircraft and engines and 4 years for interiors). For aircraft acquired on or after 1 January 2018, the accelerated tax depreciation rates shall be 4 years for the aircraft, engines & interiors.

5. MALTA TRADING COMPANY

Maltese trading companies pay taxation on their world-wide income at an effective corporate tax rate of 5%, which is the lowest in Europe. In addition, Maltese trading companies also experience the following benefits:

- Access to an extensive network of double taxation agreements
- No particular substance requirements
- Trading losses may be transferred between group companies;

  and
- Fast company formation process.

Personal Taxation

There are also a substantial amount of benefits, from a private client perspective. Apart from the obvious Mediterranean indulgence; Malta offers highly attractive personal tax schemes. Mainly in the case of non-Maltese nationals, Malta levies no taxation on worldwide income but only on locally sourced income as well as foreign income received in Malta. With effect from 1 January 2018, non-Maltese nationals will be subject to a minimum tax of €5000 annually in Malta. Additionally, one may also benefit from various schemes such as the Global Residence Programme, the Residence Programme, the Highly Qualified Persons Scheme, the Malta Retirement Programme, the Qualifying Employement in Innovation and Creativity Scheme, and the Maritime and Oil and Gas Services Scheme which involves a flat tax rate of 15% on applicable income. For individuals receiving UK pensions, Malta has now become one of the jurisdictions which meet HMRC regulations for a UK Qualifying Recognised Overseas Pension Scheme (QROPS)

Malta Double Tax Treaties

Albania • Australia • Austria • Azerbaijan • Bahrain • Barbados • Belgium • Bulgaria • Canada • China • Croatia • Cyprus • Czech Republic • Denmark • Egypt • Estonia • Finland • France • Georgia • Germany • Greece • Guernsey • Hong Kong • Hungary • Iceland • India • Ireland • Isle of Man • Israel • Italy • Jersey • Jordan • Korea • Kuwait • Latvia • Lebanon • Libya • Liechtenstein • Lithuania • Luxembourg • Malaysia • Mauritius • Mexico • Moldova • Montenegro • Morocco • Netherlands • Norway • Pakistan • Poland • Portugal • Qatar • Russia • Romania • San Marino • Saudi Arabia • Serbia • Singapore • Slovakia • Slovenia • South Africa • Spain • Sweden • Switzerland • Syria • Tunisia • Turkey • UAE • United Kingdom • United States of America • Uruguay • Vietnam, and others in the pipeline.

About KSi Malta

At KSi Malta clients benefit from 40 years of practical knowledge in taxation and legal advisory and the provision of general corporate services. KSi Malta values the skills, strengths and perspectives of its diverse team and prides itself on its staff professionalism to strengthen the firm's competitive edge. Since inception, KSi Malta has encouraged a participatory relationship among all team members as well as its clients.

This flexible approach enables all parties to be involved during all processes that directly lead to the advancement of every client's business objectives. KSi Malta draws on its ample experience in order to assist local businesses to grow as well as in supporting international companies interested in establishing themselves and operating in Malta. KSi Malta makes use of all the business contacts it has in order to support clients' business requirements. Furthermore, the firm guarantees the utmost commitment to all its clients, whilst offering an efficient and tailored service.

KSi Malta is a member of Morison KSi, a global association of leading professional service firms, established to meet the cross-border accounting, auditing, tax and business consulting needs of clients. It consists of 160 member firms, is present in 82 countries, employees over 10,000 members of staff for a turnover of more than $1 billion.

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Each Morison KSi member firm offers a personal service based on a thorough understanding of both the local culture, and the particular international needs of its clients. The services provided vary and usually encompass audit, accounting, taxation and general business advice offered to a wide variety of industries, from small start up businesses to publicly traded corporations.

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