

Tax Agenda Malta

May 2023



No.	Fact	Action
1	<p>Fiscal unity</p> <p>Maltese incorporated companies are subject to taxation on a worldwide basis. Having said that, shareholders are eligible for the Maltese Refundable Tax Credit System once the taxed income is distributed as a dividend. Through such system it may be possible for the effective tax rate to be 5%. With Fiscal unity which was introduced in 2019, it is now possible to expediate the mechanism above by eliminating the current process of paying the full amount of taxation and then claiming the refund at a later date to merely a set off between the amounts due to and from the company so that only the 5% is paid in the first place.</p>	<p>Effective for accounting periods commencing in calendar year 2019</p> <p>MNEs should analyze whether they are eligible for the Maltese refundable tax credit system and whether fiscal unity should be explored.</p> <p>● ●</p>
2	<p>Maltese Tonnage Tax Regime</p> <p>Malta also has a long history when it comes to shipping and maritime activity. In 2018 the EU approved the tonnage tax regime for the next 10 years. Under the Maltese Tonnage Tax Regime, eligible shipping companies would need to pay a tonnage tax and at the same time benefit from an exemption from income tax on their shipping activity. This regime should not be affected by the BEPS Pillar 2 changes due a specific exemption that applies to shipping activities.</p>	<p>Effective for accounting periods commencing in calendar year 2018</p> <p>MNEs involved in shipping and related activities can explore eligibility for the Maltese Tonnage Tax Regime especially those who would like to diversify their fleet's country of registration.</p> <p>● ●</p>

Use text boxes above the timeline to plan your actions for coming months

● Compliance ● Risk management ● Cash-flow and ETR impact

No.	Fact	Action	●	●
3	<p>Tax treatment vis-a-vis intellectual property</p> <p>Capital expenditure on intellectual property can be amortized for tax purposes over a period of three years. Moreover, Malta has recently launched a nexus-based Patent Box Regime (Deduction) Rules in August 2019. These rules apply to qualifying income derived from qualifying intellectual property on or after financial year 2019. This regime allows for an enhanced deduction in relation to qualifying IP expenditure and which can potentially bring the effective tax to 1.75%. The general conditions that need to be satisfied in order to apply for such an enhanced deduction include that the company need to own the IP or holds an exclusive license in respect of a qualifying IP. In addition to this requirement the company also needs to have carried out, wholly or partly, specific activities leading to the creation, development, improvement or protection of the qualifying IP, solely or together with any other person/s or in terms of a cost sharing arrangement with other person.</p>	<p>The Patent Box Regime applies from 2019 onwards</p> <p>MNEs, especially those with a presence in Malta, for example in the manufacturing and online gaming industries, can explore the possibility of applying the Patent box regime.</p>	●	●
4	<p>Maltese Non-Domiciled Company</p> <p>A company which is incorporated outside Malta but is managed and controlled in Malta is treated as a Maltese resident company (non-Dom Co). A non-Dom Co would not be taxed on Foreign source capital gains and Foreign source (passive) royalty income that is not received in Malta. A non-Dom Co may be eligible to use the Maltese refundable tax credit system with the potential to reduce the effective tax rate to 5%, on income which is subject to tax in Malta.</p>	<p>MNEs especially with intellectual property may assess the implications of Maltese Non-Domiciled companies.</p>	●	●
5	<p>Notional Interest Deduction</p> <p>A company registered in Malta may claim a "notional interest deduction" (NID) in determining its chargeable income. NID may be claimed against taxable income arising from assets (including income arising from IP) which are financed by risk capital. The NID which may be claimed is determined by reference to the company's risk capital, that is, its equity, reserves and non-interest-bearing loans. The maximum NID that may be claimed in any particular year is capped to 90% of the Maltese registered company's chargeable income.</p>	<p>Applicable for accounting periods commencing in 2017 onwards</p>	●	●
6	<p>Intra-group surrender of unabsorbed capital allowances</p> <p>Scheme extended to YA 2023, allowing groups of companies which may benefit from group loss relief to surrender capital allowances arisen in the financial years 2020 and 2021 and which, owing to losses incurred due to the COVID-19 pandemic, couldn't be absorbed during the said years. The measure was introduced with effect from the year of assessment 2022 by virtue of the Group Deductions (Income Tax) Rules, (S.L. 123.205) and, amongst other, the said rules capped the total allowable deductions that could be claimed thereunder at EUR1,000,000 per group of companies.</p>	<p>Applicable for both Basis year 2021 (YA 2022) and Basis year 2022 (YA 2023)</p>	●	●

No.	Fact	Action
7	<p>Incentives for the Audio-Visual Industry</p> <p>The government of Malta has recently upgraded the cash rebates for filmmakers. Productions which satisfy a cultural test can benefit from a rebate up to 40% of eligible expenditure. A feature film, television film or a television series or mini-series, animation, creative documentary, transmedia and cross-media productions are all eligible for the incentives, provided that they are all or partially produced in Malta. Apart from the cash rebate such productions can also benefit from the Maltese Refundable Tax Credit System and Fiscal Consolidation which both have the potential to bring the effective tax rate on income arising in Malta to 5%. In addition, reduced personal income tax rates apply on personnel involved in such productions.</p>	<p>MNEs involved in audio visual industry can explore eligibility for the Maltese cash rebate system for filmmakers.</p> <p style="text-align: right;">● ●</p>
8	<p>Introduction of transfer pricing regulations</p> <p>On 18 November 2022, Malta implemented transfer pricing (TP) rules into domestic law. The TP rules will be applicable to cross-border arrangements between associated enterprises. The term “associated enterprises” is defined as a body of persons having 50% or more voting rights in an entity part of a Multinational Enterprise (MNE) Group in scope of the country-by-country (CbC) reporting or 75% voting rights in the case of MNE groups not falling within the scope of CbC reporting.</p> <p>The TP rules include two de minimis thresholds: (1) an aggregate value of EUR6m for arrangements of a revenue nature in the year preceding the year of assessment; and (2) EUR 20 m for arrangements of a capital nature in the year preceding the year of assessment. This means that when the arrangement does not fall under thresholds, and unless elected otherwise by the taxpayer, the TP rules should not apply.</p> <p>As for the attribution of profits to PEs, Malta will follow the authorized OECD approach and will treat a PE as if it were a separate enterprise engaged in the same or similar activities under the same or similar conditions.</p>	<p>The transfer pricing rules will apply vis-a-vis any relevant arrangement entered into on or after 1 January 2024 and any relevant arrangement entered into before the said date which is materially altered thereafter.</p> <p style="text-align: right;">● ●</p>
9	<p>Enactment of Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC 7) into local legislation by virtue of Legal Notice 8 of 2023</p> <p>The new rules introduce a reporting obligation for digital platforms inside and outside the EU and an automatic exchange of information between Member States’ tax administrations on revenues generated by sellers on these platforms as of 1 January 2023. Besides introducing this new reporting obligation for digital platforms, a number of generic changes to the DAC not limited to digital platforms were also introduced, including a legal framework for the conduct of joint audits between two or more Member States as of 1 January 2024.</p>	<p>Businesses making use of digital platforms need to review the new reporting obligations resulting from the enactment of DAC 7 into Maltese legislation.</p> <p style="text-align: right;">● ●</p>

Contacts:

Dr. Robert Attard
Partner, ITTS Leader
Ernst and Young Ltd
Msida, Malta

robert.attard@mt.ey.com

Silvio Camilleri
Senior Manager
Ernst and Young Ltd
Msida, Malta

silvio.camilleri@mt.ey.com

Giljan Aquilina
Senior Manager
Ernst & Young LLP
(United States), New York

giljan.aquilina1@ey.com

EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws.

For more information about our organization, please visit ey.com.

© 2023 EYGM Limited.

All Rights Reserved.

EYG no. 004054-23Gbl

ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal, or other professional advice. Please refer to your advisors for specific advice.

ey.com