



# ICLG

The International Comparative Legal Guide to:

## Corporate Tax 2019

**15th Edition**

A practical cross-border insight into corporate tax work

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Dror Levy

**Group Consulting Editor**

Alan Falach

**Publisher**

Rory Smith

**Published by**

Global Legal Group Ltd.  
59 Tanner Street  
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Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
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## EDITORIAL

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Welcome to the fifteenth edition of *The International Comparative Legal Guide to: Corporate Tax*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of corporate tax

It is divided into two main sections:

Two general chapters, offering an insight into tax and state aid, and tax in relation to the digital economy.

Country question and answer chapters. These provide a broad overview of common issues in corporate tax laws and regulations in 34 jurisdictions.

All chapters are written by leading corporate tax lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor William Watson of Slaughter and May for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.com](http://www.iclg.com).

Alan Falach LL.M.  
Group Consulting Editor  
Global Legal Group  
[Alan.Falach@glgroup.co.uk](mailto:Alan.Falach@glgroup.co.uk)

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# Malta

Ramona Azzopardi



Sonia Brahmi



## WH Partners

### 1 Tax Treaties and Residence

#### 1.1 How many income tax treaties are currently in force in your jurisdiction?

Malta has a voluminous tax treaty network, with most European countries and also with third countries enabling tax-efficient structures and relief from double taxation on cross-border transactions. To date, Malta has 71 signed and ratified double taxation treaties.

#### 1.2 Do they generally follow the OECD Model Convention or another model?

Notwithstanding the fact that Malta is not an OECD member country, almost all the double tax treaties which were concluded by Malta adopt the OECD Model Convention as their basis.

#### 1.3 Do treaties have to be incorporated into domestic law before they take effect?

Article 76(1) of the Income Tax Act (Chapter 123 of the Laws of Malta) grants the automatic ratification of double taxation agreements upon their conclusion. Double tax treaties have primacy of over domestic law as instruments of international law.

#### 1.4 Do they generally incorporate anti-treaty shopping rules (or “limitation on benefits” articles)?

Generally, Malta double taxation agreements do not incorporate anti-treaty shopping rules or limitation of benefits articles. However, agreements like the one entered with the USA includes a limitation of benefits clause designed to avoid treaty-shopping.

#### 1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

In Malta, double tax treaties override any provisions to the contrary under Maltese domestic tax legislation

#### 1.6 What is the test in domestic law for determining the residence of a company?

All companies incorporated in Malta are deemed to be domiciled and

resident in Malta for tax purposes regardless of where management and control is exercised in Malta.

### 2 Transaction Taxes

#### 2.1 Are there any documentary taxes in your jurisdiction?

The Duty on Documents and Transfers Act (Chapter 364 of the Laws of Malta) provides for the imposition of a tax commonly referred to as stamp duty on certain legal documents and transfers. Under the said Act, the duty is chargeable on documents and transfers or transmissions concerning immovable property, marketable securities, interests in partnerships, transfers *causa mortis*, contracts of exchange and policies of insurance.

#### 2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

VAT was initially introduced into the Maltese legal system in 1994. Since then numerous amendments have been made to the Maltese VAT Act (Chapter 406 of the Laws of Malta). The standard rate of VAT in Malta is 18%. However, in terms of the Eighth Schedule to the VAT Act, the reduced rates of 0%, 5% or 7% apply to certain transactions. The VAT Act and its subsidiary legislations are based on the EU VAT Directives.

#### 2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

The VAT Act distinguishes between different types of exemptions by reference to the rights granted to the person providing the transaction and the availability to claim input tax incurred in connection with the said transaction.

In fact, the VAT Act lists a number of goods and services which are considered to be either exempt with credit supplies or exempt without credit supplies. Suppliers providing exempt with credit supplies do not charge VAT on those particular transactions, however, the supplier is still entitled to recover input VAT incurred on expenses and overheads that are directly connected with the provision of such supplies. On the other hand, suppliers providing exempt without credit supplies, albeit not charging VAT on those particular transactions, are not entitled to recover the input VAT incurred on expenses and overheads that are directly connected with such supplies.

#### 2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

Generally speaking, a business may recover VAT payable or paid in the course of its economic activity. Every business registered for VAT purposes in terms of Article 10 of the VAT Act is entitled to recover input VAT that is attributable to:

- (a) taxable supplies;
- (b) exempt with credit supplies; and
- (c) supplies which take place outside Malta which would, if made in Malta, be treated as taxable supplies or as exempt with credit supplies, or supplies taxed outside Malta which are made in Malta and would have been treated as exempt without credit supplies.

A business registered in terms of Article 10 which furnishes a tax return for a tax period has the right to deduct the input tax for that period from the output tax for that period. In addition, the right to claim input VAT must be supported by a tax invoice.

However, businesses registered under Article 11 or Article 12 of the VAT Act for VAT purposes are precluded from recovering input tax.

#### 2.5 Does your jurisdiction permit VAT grouping and, if so, is it “establishment only” VAT grouping, such as that applied by Sweden in the *Skandia* case?

With effect from 1<sup>st</sup> June 2018, VAT grouping was implemented in Malta and such regime allows separate legal persons, connected together by a specific criteria, to be grouped together as a single taxable person for VAT purposes.

The Value Added Tax (Regulation as a Single Taxable Person) Regulations provide that if a legal person has establishments outside Malta, such establishments may be part of the group except where they are part of another VAT group outside of Malta. To this effect, the Maltese legislation seems to deviate slightly from the *Skandia* case.

#### 2.6 Are there any other transaction taxes payable by companies?

No, there are not.

#### 2.7 Are there any other indirect taxes of which we should be aware?

Malta imposes an import duty on imports from non-EU countries. The import duty varies according to the type of product imported.

An excise duty is paid on certain specific goods (e.g. alcoholic beverages and tobacco products) imported or produced in Malta and sold in Malta.

In addition, a fuel bunkering tax per metric ton is charged on the bunkering of certain fuel oils used for ships and their machinery and supplies free from customs and other duties.

Moreover, an eco-tax contribution is charged on every tourist of over 18 years of age arriving in Malta and it is capped at €5 per visit.

### 3 Cross-border Payments

#### 3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

In Malta, no tax is withheld on dividends paid by Maltese Companies to non-Maltese shareholders.

#### 3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

No withholding tax applies on royalties paid by Maltese Companies to non-residents.

#### 3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

No withholding tax applies on interest paid by Maltese Companies to non-residents.

#### 3.4 Would relief for interest so paid be restricted by reference to “thin capitalisation” rules?

There are no thin capitalisation rules in Malta.

#### 3.5 If so, is there a “safe harbour” by reference to which tax relief is assured?

This is not applicable.

#### 3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

This is not applicable.

#### 3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

There are currently no restrictions on tax relief for interest payments in Malta.

#### 3.8 Is there any withholding tax on property rental payments made to non-residents?

No withholding tax applies on property rental payments made to non-residents.

#### 3.9 Does your jurisdiction have transfer pricing rules?

To date, there are no transfer pricing rules in force in Malta. However, this might change in the near future as a result of the local implementation of BEPS actions.

## 4 Tax on Business Operations: General

### 4.1 What is the headline rate of tax on corporate profits?

Companies which are incorporated in Malta are subject to a standard corporate tax rate of 35% on worldwide income and capital gains. Foreign companies which are incorporated outside Malta but which are managed and controlled in Malta and/or which carry out business activities in Malta, are subject to pay tax in Malta on the income and capital gains that arise in Malta and on foreign income which is received in Malta.

### 4.2 Is the tax base accounting profit subject to adjustments, or something else?

In order to calculate the accounting profit, Maltese Companies follow the International Financial Reporting Standard (IFRS) accounting principles or the General Accounting Principles for Small and Medium Enterprises (GAPSME). The GAPSME are the Maltese General Accepted accounting principles based on IFRSs.

The Accounting Profit Before Tax figure does not necessarily equal the Income Chargeable to Tax as the Income Tax Act provides that certain types of expenses/losses must be added back and certain income/gains are deducted from the tax computation.

### 4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

Given that expenses must be wholly and exclusively incurred in the production of the company's income; the items of expense as provisions and unrealised losses or gains are to be added back to the accounting profit/loss before tax to compute the income that is chargeable to tax.

### 4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

Groups of companies may benefit from group relief in Malta where a member of one company surrenders tax losses to another member within the group. The losses surrendered by the company can be set off against the tax profits or chargeable income of the other company making the claim. The group relief is available if the companies are members of the same group throughout the year preceding the year of assessment for which the relief is claimed.

In order to be eligible for tax grouping relief, the companies must be resident in Malta and none of them may be resident in any other country for tax purposes. Additionally, one of the companies must be more than a 50% subsidiary of the other or both companies must be more than 50% of a third company which is resident in Malta. Hence, the tax grouping relief is not available in the case of overseas subsidiaries.

### 4.5 Do tax losses survive a change of ownership?

Tax losses may be carried forward indefinitely, even if there is a change in shareholder, as long as the trading activities of the company are not altered and the change in the ownership is not deemed to be a tax avoidance scheme.

### 4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

No. Chargeable income is subject to income tax at a standard rate of 35%, irrespective of whether it is distributed or not. However, the shareholders – when receiving a dividend – may benefit from the relief for economic double taxation through the application of the full imputation and refund system. The shareholder may claim a refund of all or part of the Malta tax paid on the distributed profits.

### 4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

Maltese Companies are not subject to any other significant direct taxes.

## 5 Capital Gains

### 5.1 Is there a special set of rules for taxing capital gains and losses?

Maltese tax law does not provide for blanket tax on all capital gains. Chargeable capital gains are brought to charge as part of the taxpayer's chargeable income.

Gains which are chargeable to tax in Malta, are those which are derived from the transfer of ownership, usufruct, assignment or cessation over any rights on immovable property, securities, business, goodwill, business permits, and from the transfer of beneficial interest in a trust.

Maltese tax law contains specific rules on the computation of capital gains on immovable property and the transfer of securities including shares in a company and interest in a partnership. The rules also contain formulae for the increase of inflation on the value of immovable property.

Foreign sources capital gains which are remitted to Malta are not charged to tax, unless they are owned by persons who are both ordinary resident and domiciled in Malta. Additionally, the transfer of assets between companies of the same group is exempt from capital gains tax.

### 5.2 Is there a participation exemption for capital gains?

Capital gains which are derived by a Malta company from the transfer of a participating holding, where the taxpayer has not shown such gain as part of his chargeable income, may benefit from a participation exemption.

Should the Malta company decide not to opt for the participation exemption it will be subject to tax on the capital gains arising from the participating holding. The shareholder will then be entitled to claim a 100% refund of the company income tax upon the distribution of profits.

### 5.3 Is there any special relief for reinvestment?

Where an asset which is used for a period of at least three years is transferred and replaced within one year by another asset which is used solely for a similar purpose in the business, any capital gains

realised on the transfer of are not subject to tax. However, the cost of acquisition of the new asset is reduced by the said gain. If the asset is disposed of without replacement, the overall gain must consider the transfer price and the cost of acquisition, reduced as aforesaid.

Where the asset is transferred from one company to another company and such companies are deemed to be a group of companies or controlled and beneficially owned directly or indirectly to the extent of more than 50% by the same shareholders, it is deemed that no loss or gain has arisen from the transfer.

#### **5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?**

No, Malta does not impose withholding tax on the proceeds of selling a direct or indirect interest in local assets or shares. The acquisition or disposal of marketable securities is subject only to duty on documents, however, exemptions are available for transfers of the marketable securities made in a company if such company obtains a duty exemption. The exemption is only granted if the business interest of the company is located outside Malta and the ultimate beneficial owner/s are non-Maltese resident individuals.

### **6 Local Branch or Subsidiary?**

#### **6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?**

There are no taxes levied in Malta upon the formation of a subsidiary.

#### **6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?**

A local subsidiary is deemed to be both resident and domiciled in Malta and thus taxed on a worldwide basis in Malta. A branch of a foreign company is subject to 35% tax in Malta on the profits “attributable” to the Malta branch in terms of general rules of international taxation. The Malta branch would be covered by the local tax accounting system and can avail of the refundable tax credit system available to companies registered in Malta.

#### **6.3 How would the taxable profits of a local branch be determined in its jurisdiction?**

The branch would be subject to taxation in Malta on income and certain capital gains arising in Malta. For the purpose of ascertaining the total income, all expenses wholly and exclusively incurred in the production of the income shall be deducted.

#### **6.4 Would a branch benefit from double tax relief in its jurisdiction?**

Maltese branches of foreign companies that receive foreign income such as dividends, interests or royalties that have been subject to source country withholding taxes can claim that withholding tax as a credit against their tax liability.

#### **6.5 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?**

Malta does not impose any outbound withholding taxes on remittance of profits by the branch.

### **7 Overseas Profits**

#### **7.1 Does your jurisdiction tax profits earned in overseas branches?**

A company incorporated in Malta is deemed to be both resident and domiciled in Malta and thus is taxed in Malta on a worldwide basis, subject to double taxation relief. However, any income or gains derived by a local company attributable to a branch outside of Malta may be exempt from taxation in Malta in view of the participation exemption.

#### **7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?**

Dividends received by a Malta company from a non-resident company that qualifies as a “participating holding” may either (i) avail of the participation exemption, or (ii) pay tax on such dividend at the 35% tax rate, and then the shareholders will be entitled to a 100% tax refund of the Malta tax paid.

This is subject to certain anti-abuse provisions and the non-resident company (the subsidiary) must either: (i) be resident or incorporated in the EU; (ii) be subject to any foreign tax of at least 15%; or (iii) have more than 50% of its income derived from passive interest or royalties. If none of these conditions are satisfied, then both of the following two conditions must be satisfied:

- (1) the equity holding of the Maltese company in the non-resident company is not a portfolio investment; and
- (2) the non-resident subsidiary or its passive interest or royalties have been subject to a minimum 5% foreign tax.

#### **7.3 Does your jurisdiction have “controlled foreign company” rules and, if so, when do these apply?**

To date Malta does not currently have “controlled foreign company” rules and relies on general anti-abuse provisions. However, these CFC rules should be implemented in line with the implementation of the EU Anti-Tax Avoidance Directive in 2019.

### **8 Taxation of Commercial Real Estate**

#### **8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?**

The transfer of immovable property situated in Malta attracts duty on documents and tax on property transfers.

#### **8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?**

Capital gains that arise upon the transfer of real estate securities are subject to the tax and duty.

### 8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

REITs are not subject to tax provided that they allocate all or almost all of their profits to their investors.

## 9 Anti-avoidance and Compliance

### 9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

Yes, the Income Tax Act caters for two anti-avoidance or anti-abuse rules:

- (a) Artificial or fictitious schemes which reduce the amount of tax payable may be disregarded and the persons concerned would be assessable accordingly.
- (b) Where a scheme solely or mainly aimed at obtaining an advantage which has the effect of avoiding, reducing or postponing liability to tax a person, the person who has obtained (or is in the position to obtain such an advantage), may be assessed to tax by the Commissioner of revenue on such tax advantage.

### 9.2 Is there a requirement to make special disclosure of avoidance schemes?

To date, there is no such a requirement. However, in the view of the implementation of the Directive on administrative cooperation in the field of taxation (DAC 6) – by 1<sup>st</sup> January 2019 – certain persons including intermediaries will be required to disclose any potential aggressive tax planning arrangements.

### 9.3 Does your jurisdiction have rules which target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

Following the implementation of DAC6 in Malta, certain persons who promote, enable or facilitate tax avoidance and who meet the criteria of DAC6 (subject to local specificities) will be required to disclose potential aggressive tax planning arrangements.

### 9.4 Does your jurisdiction encourage “co-operative compliance” and, if so, does this provide procedural benefits only or result in a reduction of tax?

Malta has no specific co-operative compliance schemes providing tax benefits. There are no current tax amnesty programmes.

## 10 BEPS and Tax Competition

### 10.1 Has your jurisdiction introduced any legislation in response to the OECD’s project targeting Base Erosion and Profit Shifting (BEPS)?

Malta has implemented the Country-by-Country Reporting requirement in the Cooperation with Other Jurisdictions on Tax Matters Regulations (Legal Notice of 2016), as per Action 13 of the BEPS report.

### 10.2 Does your jurisdiction intend to adopt any legislation to tackle BEPS which goes beyond what is recommended in the OECD’s BEPS reports?

To date, the Maltese Tax Authorities have not communicated on the next steps to be taken in order to tackle the actions of the OECD’s BEPS reports. Malta has been reviewed by the OECD under Action 14 and it was considered that Malta meets almost all the elements of the Action 14 Minimum Standard to ensure the effectiveness and efficiency of the mutual agreement procedure.

### 10.3 Does your jurisdiction support public Country-by-Country Reporting (CBCR)?

CBCR has been implemented in Malta by virtue of Legal Notice 400 of 2016 entitled the Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations 2016.

### 10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

No, it does not.

## 11 Taxing the Digital Economy

### 11.1 Has your jurisdiction taken any unilateral action to tax digital activities or to expand the tax base to capture digital presence?

As a Member State of the European Union, Malta’s legislation aims to be compliant with EU legislation, harmonised with other Member States’ regimes. In Malta, incomes generated through the supply of online products would be subject to the general principles of income tax and hence taxed at progressive rates in the case of individual suppliers and at the standard corporate tax rate of 35% in the case of a company. To date, no unilateral action has been taken to tackle the taxation of digital activities.

### 11.2 Does your jurisdiction support the European Commission’s interim proposal for a digital services tax?

Malta’s government has not been in favour of the interim proposal for a digital services tax. During the EU Digital Summit on 29<sup>th</sup> September 2017, Prime Minister Joseph Muscat expressed his opposition to the proposal to tax the digital turnover of large companies. Malta’s tax policy favours solutions that will address longer-term or permanent problems, rather than expedient quick-fixes that do not address the root problems caused by the largest corporations providing digital services.



### Ramona Azzopardi

WH Partners  
Level 5, Quantum House  
75 Abate Rigord Street  
Ta' Xbiex XBX1120  
Malta

Tel: +356 2092 5100  
Email: [ramona.azzopardi@whpartners.eu](mailto:ramona.azzopardi@whpartners.eu)  
URL: [www.whpartners.eu](http://www.whpartners.eu)

Ramona Azzopardi is recognised as one of the leading taxation lawyers in Malta. She heads the Tax and Private Client Department and regularly advises corporate clients in the gaming and gambling, financial services, and digital services industries, on their cross-border tax implications. She also assists HNWI families in estate and tax planning. Ramona holds a Doctor of Laws Degree and Masters in Financial Services from the University of Malta. Ramona is a regular speaker at tax conferences and often contributes articles to prominent publications. She is also a Council Member at the Malta Institute of Taxation.



### Sonia Brahmi

WH Partners  
Level 5, Quantum House  
75 Abate Rigord Street  
Ta' Xbiex XBX1120  
Malta

Tel: +356 2092 5100  
Email: [sonia.brahmi@whpartners.eu](mailto:sonia.brahmi@whpartners.eu)  
URL: [www.whpartners.eu](http://www.whpartners.eu)

Sonia Brahmi is a Senior Associate at WH Partners where she primarily practises tax law. She specialises in tax transparency, advising financial institutions on the implementation of the FATCA-IGA regulations, and international groups on their Country-by-Country Reporting obligations. She also assists clients with the implementation of the Common Reporting Standard, providing staff training, advising on due diligence and reporting rules, and providing health-check services.

In addition, Sonia provides corporate tax advice, focusing on the implementation of tax-efficient structures for cross-border transactions.

## WHPARTNERS

WH Partners is a leading Malta-based business law firm with a focus on taxation, gaming and gambling, financial and investment services, Fintech, and blockchain and cryptocurrencies. Both the firms and the lawyers are highly ranked by the foremost legal directories, including *World Tax*, *Chambers & Partners*, *The Legal 500* and *IFLR 1000*.

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59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [info@glgroup.co.uk](mailto:info@glgroup.co.uk)

[www.iclg.com](http://www.iclg.com)