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Double Tax Relief and  
Introduction to  
the Malta Tax  
Payment and Refund  
System  
**MIRRAINE VELLA**

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## AGENDA

- Different forms of double tax relief available in the Income Tax Act
- The Flat Rate Foreign Tax Credit
- Practical aspects, including how to fill in the relevant tax return attachments and forms



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## Different forms of double tax relief available in the Income Tax Act

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## Double taxation

- Double Taxation can take two forms:
  - Juridical – same source taxed in more than one jurisdiction
  - Economic - same source taxed at different levels (at company & at shareholder level)
- Double taxation of income is considered undesirable since it discourages free movement of capital. Many states seek to reduce or eliminate instances of double taxation.



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## Double taxation relief

In terms of Article 74 of the Income Tax Act, there are four types of reliefs of double taxation reliefs namely:

- double taxation relief, Articles 76 to 78;
- unilateral relief, Articles 79 to 88;
- relief in respect of Commonwealth income tax, Articles 89 to 91; and
- a flat-rate foreign tax credit, Articles 92 to 95.



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## Treaty relief

- Double Taxation agreements are international agreements between states that provide for double taxation relief. These treaties override national laws in case of conflict. Double Taxation Agreements apply only on Income Tax and Capital Gains.
- Double Taxation agreements do not grant states the right to tax, they merely allocate taxing rights between two states.
- A Double Taxation agreement may (1) prohibit a source state from asserting tax or (2) limited the source state's right to tax (partially or entirely).
- A Double Taxation agreement does not limit the residence state's right to tax, but obliges it to provide double tax relief by means of **credit** (or, in other states, by means of exemption) in cases where the source state is allowed to tax.



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## Unilateral relief

- Unilateral relief is based entirely on Maltese law. It is applied when:
  - there is no double taxation agreement in place;
  - Commonwealth relief may not be applied; or
  - the income in question is not covered by the methods listed above.



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## Treaty & Unilateral relief

- Applicant must be resident of Malta (unilateral relief also extends to 'companies registered in Malta')
- Tax paid abroad must be of a comparable character to Malta income tax
- In the case of double tax treaty relief, there must be a Double Tax Treaty in force
- Applicant must possess evidence of foreign tax paid abroad
- Income must be taxable in Malta

The Credit may not exceed tax payable in Malta on that particular income – No refund may result.

A claim for a tax credit must be made not later than 2 years after the end of the YoA to which the claim refers.



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## Double Taxation Relief – treaty relief example

Fruit Ltd received foreign interest income amounting to EUR 13,500 from a company set up in Italy. Malta has a DTA with Italy. The income is net of 10% foreign tax. What is the Malta tax liability?

EUR 13,500 (Net of Foreign Tax - 90%)

Gross amount ?  $\text{EUR } 13,500 / 90\% = \text{EUR } 15,000$

- EUR 15,000 Gross Interest Income Received
- EUR 5,250 Tax at 35%
- EUR 1,500 Foreign tax suffered in Italy at 10%
- **EUR 3,750 Tax Liability in Malta**



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## Unilateral Relief – unilateral relief example

Fruit Ltd received foreign interest income amounting to EUR 10,000 from a company set up in Coconut Islands. Malta does not have a DTA with Coconut Islands. The income is net of 15% foreign tax. What is the Malta tax liability?

EUR 10,000 (Net Foreign Tax - 85%)

Gross amount ?  $\text{EUR } 10,000 / 85\% = \text{EUR } 11,765$

- EUR 11,765 Gross Interest Income Received
- EUR 4,118 Tax at 35%
- EUR 1,765 Foreign tax suffered in CI at 15%
- EUR 2,353 Tax Liability in Malta



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## Unilateral Relief – relief for underlying tax

The provisions of Unilateral Relief enable the company to claim relief for tax paid on a dividend indirectly. This means that relief is granted not only on tax suffered on the income received in Malta but also **on any underlying tax suffered** by the company who is paying out the dividend.

This means that relief may be obtained on:

- Foreign Tax paid on the dividend;
- Foreign Tax paid on profits received by the Company paying the dividend.

The Credit may not exceed tax payable in Malta – **No refund may result.**



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## Unilateral Relief

Fruit Ltd received dividend income amounting to EUR 10,000 from Coconut Limited situated in Coconut Islands Ltd (Net of foreign tax at the rate of 5%). Coconut Islands Limited has paid corporate tax on its profits amounting to EUR 1,500.

### What is the Malta tax liability?

EUR 10,000 (Net Foreign Tax - 95%)

Gross amount (dividend WHT)?  $\text{EUR } 10,000 / 95\% = \text{EUR } 10,526$  (grossed up with 5%)

Gross amount (CIT)?  $\text{EUR } 10,526 + \text{EUR } 1,500 = \text{EUR } 12,026$

- EUR 12,026 Gross Dividend Income Received
- EUR 4,209 Tax at 35%
- EUR 526 Foreign tax suffered by Co. at 5%
- EUR 1,500 Foreign tax suffered in Coconut Islands on profits
- EUR 2,183 Tax Liability in Malta



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## The Flat Rate Foreign Tax Credit

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## Flat Rate Foreign Tax Credit ("FRFTC")

The FRFTC is a deemed foreign tax of 25%. It does not refer to foreign tax actually paid.

Conditions to apply FRFTC:

- The company is **registered in Malta**;
- The company is **specifically empowered** to receive such income which falls to be allocated to the FIA;
- **Documentary evidence** that such gains/profits fall to be allocated to the FIA – for this requirement a certificate issued by a certified public accountant and auditor shall be enough.

The FRFTC is computed on the amount receivable after deducting foreign tax but before any other deductions of payment are made.

Operation of the FRFTC:

The income is grossed up by 25% - this is the amount which shall be chargeable to tax

The tax payable is subsequently reduced by the amount of FRFTC.



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## Flat Rate Foreign Tax Credit ("FRFTC")

The FRFTC Is subject to limitation Rules – FRFTC cannot exceed 85% of the Malta Tax on the foreign Income

$$\frac{\text{FRFTC}}{\text{Malta Tax on foreign income}} = \text{X \%}$$

Malta Tax on foreign income X% should not exceed 85%



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## Flat Rate Foreign Tax Credit (“FRFTC”)

- Fruit Ltd received dividend income amounting to EUR 10,000 from Apple Ltd (Net of foreign Tax at the rate of 5%). What is the Malta tax liability?

EUR 10,000 Net Dividend Income Received

EUR 2,500 FRFTC

EUR 12,500 Gross Income

EUR 4,375 Malta Tax at 35%

EUR 2,500 FRFTC

EUR 1,875 Tax Liability in Malta

The FRFTC Is subject to limitation Rules – FRFTC cannot exceed 85% of the Malta Tax on the foreign Income

$$\frac{2,500}{4,375} = 57\%$$



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## Flat Rate Foreign Tax Credit (“FRFTC”)

- Fruit Ltd received dividend income amounting to EUR 100,000 from Apple Ltd (Net of foreign Tax at the rate of 5%). During the year it has EUR 45,000 expenses. What is the Malta tax liability?

EUR 100,000 Net Dividend Income Received

EUR 25,000 FRFTC

EUR 125,000 Gross Income

-EUR 45,000 Expenses

EUR 80,000 Chargeable Income

EUR 28,000 Tax Charge at 35%

EUR 23,800 FRFTC – Limited to 85% of the Malta tax due

EUR 4,200 Tax Liability in Malta



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## Flat Rate Foreign Tax Credit ("FRFTC")

### Optimization method

- Method should be used only when there are deductions and the 85% limit is reached
- This is based on a percentage which will result in the most efficient FRFTC
- The percentage to be applied on the net income after deductions is 42.342%



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### FRFTC - limitation example, no optimization

Foreign income – no tax suffered -	10,000
Deductions allowed in Malta -	6,500

#### No optimization

Income	10,000
FRFTC	2,500
<hr/>	
	12,500
Expenses	(6,500)
<hr/>	
Chargeable income	6,000
<hr/>	
Tax	2,100
FRFTC	(1,785)
<hr/>	

2,100 X 85%

**Further tax 315**



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### FRFTC - limitation example, optimization applied

Income	10,000
FRFTC	1,482
<hr/>	
Expenses	11,482
	(6,500)
<hr/>	
Chargeable income	4,982
Tax	1,744
Less: FRFTC	1,482
<hr/>	

**Further tax 262**

The percentage to be applied on the net income after deductions is 42.342% -

$$10000 - 6500 = 3500$$

$$3500 \times 0.42342 = 1,482$$

Net income of €3,500 x 0.42342 = €1,482

**(Optimised FRFTC)**



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Practical aspects, including how to fill in the relevant tax return attachments and forms

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## Tax Return Completion TRA 30

Relief of double taxation									
Source of Income	Attachment / Return reference	Double Taxation Relief	Taxed A/c	Cwealth Relief	Taxed A/c	Unilateral Relief	Taxed A/c	Flat-Rate Foreign Tax Credit	Taxed A/c
ITA - Income from trade, business...	Ret. pg. 3							0	FIA
ITA - Dividend(s)	TRA 08							0	FIA
ITA - Interest(s)	TRA 09							0	FIA
ITA - Discounts or premiums	TRA 10							0	FIA
ITA - Income from Rent(s)	TRA 11							0	FIA
ITA - Income from Ground Rent(s)	TRA 12							0	FIA
ITA - Income from Royalties, etc.	TRA 13							0	FIA
ITA - Other income	TRA 14							0	FIA
ITA - Capital gain gains	TRA 15							0	FIA
Totals		0		0		0		0	
RELIEF		ALLOCATED			Totals				
		IPA	MTA	FIA					
Double Taxation Relief		0	0	0	0				
Commonwealth Relief		0	0	0	0				
Unilateral Relief		0	0	0	0				
Flat-Rate Foreign Tax Credit				0	0				
TOTALS		0	0	0	0				

- Type of Relief
- Taxed Account
- Amount



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This TRA is completed in accordance with the income on which double taxation relief is claimed.

Relief of double taxation									
Source of Income	Attachment / Return reference	Double Taxation Relief	Taxed A/c	Cwealth Relief	Taxed A/c	Unilateral Relief	Taxed A/c	Flat-Rate Foreign Tax Credit	Taxed A/c
ITA - Income from trade, business...	Ret. pg. 3	27,783	MTA					0	FIA
ITA - Dividend(s)	TRA 08							0	FIA
ITA - Interest(s)	TRA 09							0	FIA
ITA - Discounts or premiums	TRA 10							0	FIA
ITA - Income from Rent(s)	TRA 11							0	FIA
ITA - Income from Ground Rent(s)	TRA 12							0	FIA
ITA - Income from Royalties, etc.	TRA 13							0	FIA
ITA - Other income	TRA 14							0	FIA
ITA - Capital gain gains	TRA 15							0	FIA
Totals		27,783		0		0		0	
RELIEF		ALLOCATED			Totals				
		IPA	MTA	FIA					
Double Taxation Relief		0	27,783	0	27,783				
Commonwealth Relief		0	0	0	0				
Unilateral Relief		0	0	0	0				
Flat-Rate Foreign Tax Credit				0	0				
TOTALS		0	27,783	0	27,783				



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### Page 5 – DTR on Trading Income

Tax Liability for the year					
Tax on Income taxed at reduced rates	TRA 33	75a	0	75b	0
Tax on Income taxed at normal rates		76a	0	76b	27,783
Total Tax Liability on chargeable income for the year		77a	0	77b	27,783
Deduct					
Tax Credits	TRA 35	78a	0	78b	0
Tax due after deducting tax credits		79a	0	79b	27,783
Relief of double taxation	TRA 30	80a	0	80b	27,783
Double Taxation Relief				80c	0



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### TRA 8 – Dividends (example with FRFTC)

ITA - DIVIDENDS											
Details of Dividends received											
IT No. / R.O.C. No.	Paying Company	Gross Dividend					Tax Deducted				Net Dividend
		Final Tax Account	Immovable Property Account	Maltese Taxed A/c	Foreign Income A/c	Untaxed A/c	Malta tax paid	DTR	FRFTC	Withholding tax	
xxxxxx					90,647						90,647
											0
											0
											0
											0
											0
											0
											0
											0
											0
											0
											0
											0
											0
											0
											0
											0
											0
											0
											0
											0
Totals >		0	0	0	90,647	0	0	0	0	0	90,647



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## TRA 8 – Dividends (example with FRFTC)

ITA - Dividends	Exempt Dividends or Dividends from FTA [TRA 18]	Allocated			Untaxed A/c [page 3 of the tax return]	ALL DIVIDENDS RECEIVED EITHER FROM THE FINAL TAX ACCOUNT OF ANOTHER COMPANY OR FROM A PROPERTY TRANSFER RESERVE ARE TO BE ALLOCATED TO THE FINAL TAX ACCOUNT. Dividends from the FTA of another company have to be reported net of tax.
		Immovable Property Account	Maltese Taxed Account	Foreign Income A/c		
Gross Dividends Received	0	0	0	90,647	0	25% Element
Grossed up element for Flat rate foreign tax credit				22,662		
Gross Dividends Received	0	0	0	113,309	0	Grossed Up
Less direct expenses [Details required]						
Interest paid / payable						
Dividend income after deducting direct expenses	0	0	0	113,309	0	
Foreign tax paid where Article 12(1)(u) applies						
Dividend Income allocated to the Final Tax Account	0	TRA 18				



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## Page 4 – Dividends (example with FRFTC)

Income from trade, business, etc. net of capital allowances / (Loss)	49a	0	49b	0	49c	0
Dividend(s)	TRA 08	50a	0	50b	0	50c 113,309
4(1)(c) Interest(s)	TRA 09	51a	0	51b	0	51c 0
Discounts or premiums	TRA 10	52a	0	52b	0	52c 0
Net Income from Rent(s)	TRA 11	53a	0			53b 0
4(1)(e) Net Income from Ground Rent(s)	TRA 12	54a	0			54b 0
Net income from Royalties, etc.	TRA 13	55a	0	55b	0	55c 0
4(1)(g) Other income	TRA 14	56a	0	56b	0	56c 0
Net income/(loss)	57a	0	57b	0	57c	113,309

## Page 5 – Dividends (example with FRFTC)

TAXED ACCOUNTS		Immov. Property A/c	Maltese Taxed A/c	Foreign Income A/c			
[Allocation to Accounts for tax computation purposes only]							
Chargeable Income for the year [from page 4]		71a	0	71b	0	71c	113,309
Chargeable Income subject to reduced rates of tax	TRA 33	72a	0	72b	0	72c	0
Chargeable Income subject to normal rate of tax [ @ 35c]		73a	0	73b	0	73c	113,309
Totals		74a	0	74b	0	74c	113,309
				0	0	113,309	
Tax Liability for the year							
Tax on Income taxed at reduced rates	TRA 33	75a	0	75b	0	75c	0
Tax on Income taxed at normal rates		76a	0	76b	0	76c	39,658
Total Tax Liability on chargeable income for the year		77a	0	77b	0	77c	39,658
Deduct							
Tax Credits	TRA 35	78a	0	78b	0		
Tax due after deducting tax credits		79a	0	79b	0	79c	39,658
				0	0	39,658	
Relief of double taxation							
Double Taxation Relief	TRA 30	80a	0	80b	0	80c	0
Commonwealth Relief		81a	0	81b	0	81c	0
Unilateral Relief		82a	0	82b	0	82c	0
Flat-Rate Foreign Tax Credit						83a	22,662
Tax due after relief of double taxation		84a	0	84b	0	84c	16,996
						16,996	
Tax set off							



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## TRA 09 - Interest

Interests [Article 4 (1)(c) ITA]	Allocated			
	Final Tax Account	Immovable Property Account	Maltese Taxed Account	Foreign Income Account
Gross Interest NOT subject to 15% Final Withholding tax				2,000
Grossed up element for Flat rate foreign tax credit				
Gross Interest Received	0	0	0	2,000
Less direct expenses [Details required]				
Interest income after deducting direct expenses	0	0	0	2,000
	0	0	0	2,000

The Income

## Page 4 – Interest

4(1)(c) Dividend(s)	TRA 08	50a	0	50b	0	50c	0
Interest(s)	TRA 09	51a	0	51b	0	51c	2,000
Discounts or premiums	TRA 10	52a	0	52b	0	52c	0
Net Income from Rent(s)	TRA 11	53a	0			53b	0
Net Income from Ground Rent(s)	TRA 12	54a	0			54b	0
Net income from Royalties, etc.	TRA 13	55a	0	55b	0	55c	0
4(1)(g) Other income	TRA 14	56a	0	56b	0	56c	0

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## TRA 30

Relief of double taxation			
Source of Income	Attachment / Return reference	Double Taxation Relief	Taxed A/c
ITA - Income from trade, business...	Ret. pg. 3		
ITA - Dividend(s)	TRA 08		
ITA - Interest(s)	TRA 09	200	FIA
ITA - Discounts or premiums	TRA 10		
ITA - Income from Rent(s)	TRA 11		
ITA - Income from Ground Rent(s)	TRA 12		
ITA - Income from Royalties, etc.	TRA 13		

Double Taxation Relief

Chargeable Income subject to reduced rates of tax	TRA 33	72a	0	72b	0	72c	0
Chargeable Income subject to normal rate of tax [ @ 35c]		73a	0	73b	29	73c	2,000
Totals		74a	0	74b	29	74c	2,000
			0		29		2,000
Tax Liability for the year							
Tax on Income taxed at reduced rates	TRA 33	75a	0	75b	0	75c	0
Tax on Income taxed at normal rates		76a	0	76b	10	76c	700
Total Tax Liability on chargeable income for the year		77a	0	77b	10	77c	700
Deduct							
Tax Credits	TRA 35	78a	0	78b	0		
Tax due after deducting tax credits		79a	0	79b	10	79c	700
			0		10		700
Relief of double taxation							
Double Taxation Relief	TRA 30	80a	0	80b	0	80c	200
Commonwealth Relief		81a	0	81b	0	81c	0
Unilateral Relief		82a	0	82b	0	82c	0
Flat-Rate Foreign Tax Credit						83a	0
Tax due after relief of double taxation		84a	0	84b	10	84c	500
			0		10		500
Tax set off							
Tax at source on dividends	TRA 08	85a	0	85b	10	85c	0

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