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Introduction to
Maltese Tax Law

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AGENDA

- The relevant laws
- Different methods of taxation
- Residence and domicile under Maltese income tax law
- Taxable income



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The Relevant Laws

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The Relevant Laws

- Income Tax Act (ITA) – Chapter 123 of the Laws of Malta
- Income Tax Management Act (ITMA) – Chapter 372 of the Laws of Malta
- Value Added Tax Act (VATA) – Chapter 406 of the Laws of Malta
- Duty on Documents and Transfers Act (DDTA) – Chapter 364 of the Laws of Malta



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The Relevant Laws

- ITA/ITMA: **who** is brought to charge to tax, **what** is charged to tax, and at what **rates**
 - Income
 - Capital gains
 - Transfers of immovable property
- VATA: a tax on consumption (not on income or profits), paid in instalments, and that is transaction based
- DDTA: levies a tax on the fair market value of the asset being transferred



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Different Methods of Taxation

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Different Methods of Taxation

- Direct taxation
 - A tax that is levied on the **income or profits** of the person who pays it, rather than on goods or services.
 - Taxes levied in terms of the ITA
 - E.g. income tax on income generated by a company; income tax on wages and salaries
- Indirect taxation
 - A tax on **goods and services** (as opposed to income).
 - The burden of tax is shifted from one taxpayer to another.
 - E.g. VAT; excise duty



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Residence and Domicile

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Residence and Domicile

Jurisdiction to tax

- The right of a country to tax the income of a person is based on a factor that determines that person's connection to that country.
- Two main types of jurisdiction to tax –
 - **Source jurisdiction:** connection between Malta and the income
 - **Residence jurisdiction:** connection between Malta and the taxpayer



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Residence and Domicile

Domicile

Domicile for individuals

- Domicile of persons has a legal meaning and is strictly speaking not a tax matter.
- It is not determined by nationality or residence and various conditions surrounding a person should be taken into consideration.
- Generally considered to be the place of a person's permanent home; i.e. the place where a person originated from and belongs by origin as opposed to the place where a person lives.
- Maltese law does not contain any rules in this respect.



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Residence and Domicile

Domicile

Domicile for individuals

- Three categories of domicile:
 - Domicile of origin
 - Domicile of dependence
 - Domicile of choice



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Residence and Domicile

Domicile

Domicile of origin

- A person's domicile of origin is acquired at birth.
- The domicile of origin typically follows the domicile of the father, or in his absence, the domicile of the mother.
- The domicile of origin is not necessarily the country in which a person is born.
- The domicile of origin is kept until a domicile of dependence or choice is acquired.



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Residence and Domicile

Domicile

Domicile of dependence

- Until a person has the legal capacity to change his/her domicile of origin, the domicile will follow that of the person on whom that person is legally dependent.
- If the domicile of a person changes, the domicile of any dependents will automatically change into the same domicile.



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Residence and Domicile

Domicile

Domicile of choice

- A person can acquire a new domicile by leaving his current country of domicile and changing his residence and settling in another country.
- Must provide an **intention** to live in a new place of residence **permanently/indefinitely**, with no realistic intention to return to the previous country of domicile.
- There is a rebuttable presumption in favour of retention.
- Evidence is required of:
 - Protracted residence in the country of choice;
 - An intention to abandon the domicile of origin;
 - Clear, conclusive and unequivocal evidence of an intention not to return to the previous domicile.



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Residence and Domicile

Domicile

Fundamental principles

- No person can be without a domicile.
- Only one domicile at a time.
- Typically, a person is domiciled in the country where he has his permanent home.
- A person's existing domicile will continue until he has acquired a new one.
- Distinct from nationality or residence (although both can have an impact on a person's domicile).
- Case law: Gaines-Cooper



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Residence and Domicile

Domicile – Gaines-Cooper Case Study

- Domiciled in the UK. It was found that Gaines-Cooper had not abandoned his English domicile of origin in favour of a Seychelles domicile of choice.
- Gaines-Cooper had retained a strong connection in England –particularly in a relatively small area of England –where he had friends, family and business and social connections.
- It was noted that in order for a person to lose his or her domicile of origin, “there must be an intention to reside in a certain territory indefinitely” and “a person who retains a residence in his or her domicile of origin can acquire a domicile of choice only if the residence established in the new country is his or her chief residence”.



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Residence and Domicile

Domicile – Gaines-Cooper Case Study

- Although it was believed that the Seychelles was a very important part of his life, he had not shown that he had “wholly rejected England.”
- The number of days spent in the UK was not so relevant, rather the quality of the physical presence was considered.



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Residence and Domicile

Domicile

Domicile for legal persons

- By operation of the law
- Domicile of choice



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Residence and Domicile

Domicile

By operation of the law

- Legal persons owe their existence to the legal system under which they have been incorporated or established.
- The domicile of legal entities is the country which legal system gives the person its legal personality, i.e. the country under the laws of which the person has been incorporated or established.



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Residence and Domicile

Domicile

Domicile of choice

- In terms of Maltese law, the domicile of origin of Maltese limited liability companies and companies, which are similar in nature to such a limited liability company, can be substituted for a domicile of choice without affecting the continuity and the property of the company (no new legal entity will be created and the company would retain all its assets, rights, liabilities and obligations).
- A company registered and incorporated in Malta, may seek to continue/migrate to a country outside Malta, the laws of which permit the proposed continuation (**redomiciliation**).



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Residence and Domicile

Residence

Residence for individuals

- **Article 2 ITA – "Resident in Malta":**
 - An individual who resides in Malta except for such temporary absences as to the Commissioner for Revenue may seem reasonable and not inconsistent with the claim of such individual to be resident in Malta.



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Residence and Domicile

Residence

Residence for individuals

- **Article 13 ITA -Temporary residents**

- Tax shall not be payable in respect of any income arising outside Malta to any person who is in Malta for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in Malta at one or more times for a period equal in the whole to six months in the year preceding the year of assessment.
 - Some element of physical presence
 - Intention & Purpose
 - 183 day rule



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Residence and Domicile

Residence

Residence for legal persons

- Article 2 ITA -"Resident in Malta":
 - Any body of persons the control and management of whose business are exercised in Malta or which is incorporated in Malta.
- Incorporation principle:
 - A company is considered resident when it is incorporated in Malta.
- Management and control test:
 - A body of persons is resident in Malta if the control and management of its business is exercised in Malta.



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Residence and Domicile

Residence

Residence for legal persons

- **Management and control test:**

- The 'control and management' of a company's business refers to that practiced and exercised at the level of the board of directors of the given company.
- In practice, the following are typically considered relevant for the purposes of determining tax residence in Malta:



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Residence and Domicile

Residence

- The majority of the directors are persons who are resident in Malta.
- All meetings of the board of directors are physically held in Malta.
- The company has properly equipped office space at its disposal in Malta.
- The company has sufficient human and technical resources at the disposal of the company in Malta so as to take key management and commercial decisions from Malta.
- A declaration needs to be signed by the directors and addressed to the Malta inland revenue confirming control and management being exercised from Malta



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Residence and Domicile

Residence – Case Study

Cesena Sulphur Co v Nicholson

Facts:

- The company was founded for trading in Italy and registered in the UK.
- By the articles of association the company UK affairs are managed by a board of 8 directors, holding their meetings in UK.
- There is an Italian delegation, consisting of 2-3 members of the board resident in Italy, by whom all the practical management of the company is carried on.



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Residence and Domicile

Residence – Case Study

Cesena Sulphur Co v Nicholson

Facts:

- All operations connected with the manufacture and sale are exclusively carried on at Cesena, but the Italian members of the board are in constant correspondence with their co-directors resident in France and in England, who meet at the English registered office.
- Copies of the company's books of accounts are sent to London, but all originals kept in Italy.
- The principal banking accounts are kept in Turin and Paris.



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Residence and Domicile

Residence – Case Study

Cesena Sulphur Co v Nicholson

Conclusion:

- Resident in the UK.
- The company resides where its governing body is to be met with and found, and where its governing body exercises the powers conferred upon it by the Act and by the articles of association, where it meets and is in bodily and personal presence for the purposes of the concern.



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Residence and Domicile

Ordinary residence

Ordinary residence for individuals

- Nationality or citizenship is not relevant. It is the fact pattern of a person's presence in Malta which is to be taken into account when deciding upon the degree (simple vs. ordinary) of residence.
- A level of continued residence which is higher than mere residence and therefore implies a narrower concept than simple residence.
- An intention to spend a significant period of time in Malta (does not have to be permanent or indefinite) and entails a degree of continuity.
- A person's intentions, lifestyle and habits are not, per se, factors which are to be taken into account in determining ordinary residence in Malta.



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Residence and Domicile

Ordinary residence

Ordinary residence for legal persons

- Should the concept of ordinary resident also apply to companies, a company may be considered ordinary resident in Malta if the residence in Malta subsist for a repeated number of successive years.
- Companies are classified as ordinary resident in Malta if they are incorporated in Malta.
- Since the tax treatment in Malta of companies incorporated outside Malta but 'resident' or 'ordinary resident' in Malta is identical, the distinction is of no practical importance.



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Residence and Domicile

Ordinary residence – Case Study

The Pavarotti case

Facts:

- The case revolved around determining whether Pavarotti was resident and liable to tax in Italy or not.
- Pavarotti owned several properties, companies and kept bank deposits in Italy. In addition, he also had spent several years of marriage with his first wife there, his daughters lived in Italy and he stayed in Italy with his new partner after his divorce.
- Pavarotti argued he was enrolled in the Registry of Italian Citizens Residing Abroad and that he resided in the Principality of Monaco-Monte Carlo in a 90 square-metre apartment.



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Residence and Domicile

Ordinary residence – Case Study

The Pavarotti case

Conclusion:

- The Italian Tax Court concluded that the concept of “residence” used in Italian civil and tax law and which is made up of the concepts of “habitual” and “abode” could not be utilized in the case because: Pavarotti was enrolled in the Registry of Italian Citizens Residing Abroad and it was very hard to verify the intention to continue to live in his current abode.
- The Court examined the concept of “domicile” under Italian civil law: the place where a person has established the “main centre of his business and interests”. The Court explained that the expression “interests” used to identify a taxpayer’s domicile covers both economic and personal interests. In the case at issue the Court held that the economic and personal interests of the taxpayer were in Italy.



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Residence and Domicile

Ordinary residence – Case Study

The Pavarotti case

Conclusion:

- The Court concluded that, although he resided abroad, the taxpayer maintained the centre of his business and interests, i.e. his domicile, in Italy and therefore he was liable to individual income tax there under Italian domestic law.



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Residence and Domicile

Basis of taxation

Worldwide basis

- Liability to tax in Malta on Malta source income and capital gains and on foreign source income and capital gains.
 - On all income derived from or arising in Malta.
 - On all income derived from or arising outside Malta whether received in Malta or otherwise.
 - On all capital gains derived from or arising in Malta.
 - On all capital gains derived from or arising in Malta whether received in Malta or otherwise.



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Residence and Domicile

Basis of taxation

Source and remittance basis

- Liability to tax in Malta on Malta source income and capital gains and on foreign source income remitted to Malta.
- Remittance would not be restricted to physical transfers of money from a foreign bank account to Malta. Remittance can also occur when, inter alia, funds are used to repay a loan in Malta or to settle invoices (e.g. from service providers), when a cheque from the foreign bank account is cashed or used in Malta or when the credit card of the foreign bank account is used in Malta.

Source basis

- Liability to tax in Malta on Malta source income and capital gains.



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Residence and Domicile

Basis of taxation

Resident-Domiciled person

- Taxed on a worldwide income basis

Resident-Non-Domiciled person

- Taxed on a source and remittance basis.

Non-Resident-Domiciled person

- Taxed on a source basis? *Bit of a grey area.*

Non-Resident-Non-Domiciled person

- Taxed on a source basis.



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Residence and Domicile

Basis of taxation

Resident	Domiciled	Basis of Taxation	Description
Yes	Yes	Worldwide basis	Malta-sourced income and gains, and foreign-sourced income and gains (even if not remitted)
Yes	No	Source and remittance basis	(a)Malta-sourced income and gains, and foreign-sourced income (if remitted)
No	Yes	Source and remittance basis	(b)No tax on foreign gains even if remitted
No	No	Source basis	Malta-source income and gains (no tax on foreign income even if remitted)



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Taxable Income

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Taxable Income

Article 4 ITA

- Income tax shall be payable in respect of:
- Earned income:
 - Gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised including the profit arising from the sale by any person of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any profit making undertaking or scheme (i.e. self-employment) (Art 4(1)(a));
 - Gains or profits from any employment or office, including the value of any benefit provided by reason of any employment or office (Art 4(1)(b))



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Taxable Income

Income

Article 4 ITA

- Unearned income:
 - Dividends, premiums, interest or discounts (Art 4(1)(c));
 - Any pension, charge, annuity or annual payment (Art 4(1)(d));
 - Rents, royalties, premiums and any other profits arising from property (Art 4(1)(e));
 - Gains or profits not falling under any of the foregoing paragraphs (Art 4(1)(g)).



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Taxable Income

Capital

Article 5 ITA

- Categories of capital assets which would, subject to exemptions, constitute a chargeable receipt where a gain or profit is derived upon the transfer (or deemed) thereof:
 - Immovable property;
 - Securities, business, goodwill, business permits, copyright, patents, trademarks and trade-names;
 - Beneficial interest in a trust which includes property referred to in the points above; and
 - Interests in a partnership.
- List of chargeable assets is limited.



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