



MALTA  
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Overview of the  
Maltese Tax System

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## AGENDA

- Badges of trade
- The tools available to the tax practitioner
- The general anti-abuse provision
- An introduction to the Maltese tax compliance system



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## Badges of trade

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## Badges of Trade

### Capital vs. Income

- Receipts of an income nature are taxable but only **specific** capital gains which are taxable
- Expenses of a revenue or recurrent nature are deductible when they are wholly and exclusively incurred in the production of the income
- Expenses of a capital nature are only deductible if specifically provided for by law
- Remittance basis of taxation



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## Badges of Trade

### Capital vs. Income

- The distinction between income and capital is not one on which the legislation provides any guidance
- Analogy: the tree and the fruit of the tree.
  - The **tree** ➡ **capital**
  - The **fruit** ➡ **income**

#### Example

A person inherits a large sum of money, the receipt of that sum should be considered to be a capital receipt (and therefore, in principle should not be taxable). If that sum is placed on deposit with a bank and therefore generates interest, the interest income that it generates should be considered to be "income" and therefore such income should (in principle) be subject to income tax.



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## Badges of Trade

### Capital vs. Income

To help distinguish between capital or income, the UK courts established the "Badges of trade":

- **Frequency** of transactions (systematic and repeat transactions will support trade)
- **Nature** of the asset (gives pride of possession vs may be easily turned into a profit?)
- **Changes** to the asset/**Supplementary** work (was the asset repaired/modified?)
- **Method** of acquisition and disposal (if inherited or received as a gift, it is less likely to be subject to a trade)



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## Badges of Trade

### Capital vs. Income

To help distinguish between capital or income, the UK courts established the "Badges of trade":

- **Length** of ownership (Assets that are the subject of trade will normally, but not always, be sold quickly)
- **Motive** – profit-making
- Existence of **similar trading transactions** or interests (i.e. affinity with trading activity)
- **Source** of finance (short term vs long term financing)



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## Badges of Trade

### Capital vs. Income

#### Example:

Mr. Routledge went on a business trip to Germany in 1920 and in the course of the trip purchased one million toilet rolls. On returning to his country of residence, Mr. Routledge managed to sell the whole consignment of toilet rolls to another individual for a profit.

Is this considered Capital or Income?



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# Tools available to the tax practitioner

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## Tools available to the tax practitioner

- CfR Website
- Justice Services
- MBR website



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## Tools available to the tax practitioner

**CfR website - <http://cfr.gov.mt/>**

- The purposes of the CfR website are mainly:
  - To provide information and guidelines mainly in relation to Income Tax, Duty on Documents and Transfers Act, Capital Gains Rules, Final Settlement Tax and Social Security (e.g. tax rates, bad debts guidelines, fringe benefits guidelines)
  - To make available several forms for download (e.g. attachments to submit with individual's income tax returns, capital gains schedules, stamp duty schedules) and guides (e.g. how to complete an income tax return, how to file objections)
  - To provide tax related court cases and decisions summaries
- ...and most importantly to provide online services for tax practitioners, employers and data providers and also individuals



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## Tools available to the tax practitioner

CfR website - <http://cfr.gov.mt/>

- View tax payments
- View tax statements
- View previous income tax returns submissions
- Download and submission of PT reduction form
- Download and submission of income tax return
- Download and submission of shareholder's registration forms



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## Tools available to the tax practitioner

CfR website - <http://cfr.gov.mt/>

### Other matters

- Documents and Guides
- Guidelines
- FAQs



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## Tools available to the tax practitioner

CfR website - <http://cfr.gov.mt/>

### Tax Guidelines

Tax Guidelines explain the Office of the Commissioner for Revenue's interpretation of legislation and the way the Department applies the law in practice. They do not affect a taxpayer's right to argue for a different interpretation, if necessary in an appeal to the Administrative Review Tribunal or the Court of Appeal.

The Commissioner of Revenue is empowered by article 6(4) of the Commissioner for Revenue Act and article 96(2) of the Income Tax Act to issue guidelines, explanations or instructions relating to the revenue acts or to any Regulations issued thereunder. Subject to certain conditions and restrictions such guidelines, explanations or instructions have the force of law.



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## Tools available to the tax practitioner

CfR website - <http://cfr.gov.mt/>

Some other important guidelines:-

- Guidance Note – Article 31D (Taxation of Rental Income)
- Tax Guide to Bad Debts
- Tax Guide to Fringe Benefits (August 2017)
- Guidance on First Time Buyers Scheme
- Guidelines on Searches for First Time Buyers Scheme

### Clarifications

- Presumption of Deductions - Article 38, ITA
- Director's Fees - No-Resident Directors
- [Appointment of Tax Representative](#)
- Transfer of property forming part of a project
- Intellectual Property – Article 14(1)(m) of the Income Tax Act



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## Tools available to the tax practitioner

CfR website - <http://cfr.gov.mt/>

### FAQs

Frequently asked questions (FAQ) are listed questions and answers, all supposed to be commonly asked in some context, and pertaining to a particular topic. FAQ is a group of commonly asked questions about a subject along with the answers.

#### Income Tax:

- [General Questions](#)
- [Final Settlement Systems](#)
- [Tax Index of Financial Data](#)
- [Host Families](#)
- [Income from Part Time Work](#)
- [IR Services Online](#)
- [Reduction in Add. Tax and Interest](#)
- [Power to Request Information](#)
- [Rental Income](#)

#### Property Transfers:

- [New Property Tax System](#)
- [Other Property Tax Questions](#)
- [New Property Tax System - Checklist](#)
- [New Property Tax System - Examples](#)

#### VAT:

#### [VAT FAQs](#)

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## Tools available to the tax practitioner

Laws of Malta - <http://www.justiceservices.gov.mt/>

- Download of legislation such as:
  - Income Tax Act
  - Income Tax Management Act
  - Value Added Tax Act
  - Duty on Documents and Transfers Act
- Download of subsidiary legislation such as:
  - Legal Notices
  - Rules



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## Tools available to the tax practitioner

Laws of Malta - <https://legislation.mt/>



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## Tools available to the tax practitioner

Malta Business Registry - <https://registry.mbr.mt/ROC/>

Company Registration Number

Company Name

Exact ☐ Any Name Combinations ☒

If searching by an exact Company Registration Number, tick the Exact checkbox next to the Registration No. field.

If searching by Company Name, insert the company name or part of the company name. If the company you require is not returned in the search results, tick the Any Name Combinations checkbox, to enable a more thorough search. This is especially useful in companies which have punctuation in their names e.g. A.B.C. Ltd. If you know the exact name, you can tick the Exact checkbox.



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# Anti-abuse

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## Anti-abuse

### Article 51ITA – General anti-abuse provision

- Where **any scheme** which reduces the amount of tax payable by any person **is artificial or fictitious or is in fact not given effect to**, the Commissioner shall disregard the scheme and the person concerned shall be assessable accordingly (A 51(1) ITA).
- Where **any person, as a direct or indirect result of any scheme** of which the **sole or main purpose** was the **obtaining of any advantage** which has the effect of avoiding, reducing or postponing liability to tax, or of obtaining any refund or set-off of tax, has obtained or is in a position to obtain such an advantage, ... (A 51(2)(a) ITA)



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## Anti-abuse

### Parent – Sub Directive (A 51(2)(b) ITA

- The Parent-Sub Directive shall not apply to any arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the said Directive 2011/96/EU, are not genuine having regard to all relevant facts and circumstances.
  - (i) Arrangement can be more than one step or part;
  - (ii) ... not genuine if not put into place for valid commercial reasons which reflect economic reality; and
  - (iii) where a single step or part in an arrangement or a series of arrangements is, by itself and without regard to the remainder of the arrangement or series of arrangements, not genuine the anti-abuse will only apply to the step or part that is not genuine, without prejudice to the remainder of the arrangement or series of arrangements that are genuine.



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## Anti-abuse

### Tax losses

- Where, as a direct or indirect result of any **scheme or of any change in the shareholding** of a company income has been received by or has accrued to the company ... **unless it is proved** that the said scheme had not been entered into, or the said change had not been effected, **solely or mainly for the purpose of obtaining the benefit of any loss**, or of the balance of any loss incurred by the company in any year preceding the year of assessment, or of **any wear and tear or initial allowances**, ... (A 51(4) ITA)



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## Anti-abuse

### Definition of 'Scheme'

- "scheme" includes any disposition, agreement, arrangement, trust, grant, covenant, transfer of assets, increase in the share capital of a company and alienation of property, whatsoever, irrespective of the date on which such scheme was made, entered into or set up. (A 51(5) ITA)



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## The Maltese tax compliance system

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## The Maltese Tax Compliance System

- Self-assessment basis
- Y/A vs FY
- Reporting and Payment deadlines
- Provisional tax
- FSS



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## The Maltese Tax Compliance System Self-Assessment

- A 10(2) ITMA defines a self-assessment as "a computation showing:
  - (a) the chargeable income of that person for the year of assessment on the basis of the information contained in the return of income;
  - (b) the tax chargeable thereon; and
  - (c) the tax payable by or repayable to that person for the year of assessment"
- A 10(3) ITMA further states that a self-assessment "shall not be construed as being an assessment for any purpose of the Income Tax Acts"



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## The Maltese Tax Compliance System

### Year of Assessment

- A 10 ITA states that "Tax shall be levied... for each year of assessment"
- In terms of A 2 ITA "year of assessment" means the period of 12 months commencing on 1st January
- It follows therefore and A 11 (1) ITA clarifies this that every person in trade or business must prepare his accounts to cover the period from 1 January to 31 December of every year
- Year of Assessment = Basis year + 1



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## The Maltese Tax Compliance System

### Reporting and Payment deadlines - Companies

- Tax return date
  - Nine months after the year end or 31st March or the year following year end, whichever later
  - Year ends January to June – TRD = March
  - Year ends July to December – TRD = +9 months
- Tax return can be submitted
  - Manually
  - Electronically



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## The Maltese Tax Compliance System

### Reporting and Payment deadlines - Companies

- Tax payment deadlines
  - In line with statutory deadlines for submission of tax returns
  - Nine months after the year end or 31st March or the year following year end, whichever later
  - Year ends January to June – Payment = March
  - Year ends July to December – Payment = +9 months
- Extension to eighteen months payment deadline if:
  - income is foreign allocated to the Foreign Income Account (Art 42(9) of ITMA); or
  - for companies in possession of a determination in terms of Art 47(3)(e) DDTA.



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## The Maltese Tax Compliance System

### Reporting and Payment deadlines - Companies

Year end	Tax filing deadline (Statutory)	Tax payment deadline (Statutory)
January to June	31 March	31 March
July	30 April	30 April
August	31 May	31 May
September	30 June	30 June
October	31 July	31 July
November	31 August	31 August
December	30 September	30 September



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## The Maltese Tax Compliance System

### Extension to the Reporting deadline - Companies

The electronic tax return deadline **may** be extended by the IRD, however this extension is issued by concession by the IRD on a yearly basis

Year end	Tax Manual filing deadline (Statutory)	Extended Deadline for Electronic Filing
January to June 2021	31 March 2022	29 July 2022
July 2021	30 April 2022	29 July 2022
August 2021	31 May 2022	29 July 2022
September 2021	30 June 2022	30 August 2022
October 2021	31 July 2022	30 September 2022
November 2021	31 August 2022	31 October 2022
December 2021	30 September 2022	30 November 2022



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## The Maltese Tax Compliance System

### Reporting and Payment deadlines - Individuals

- Tax return and tax payment date
  - Six months after the year end
  - TRD = June
- Tax return can be submitted
  - Manually
  - Electronically



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## The Maltese Tax Compliance System

### Provisional Tax

- Every provisional taxpayer is required to effect provisional tax (PT) payments
- Who qualifies to be a "provisional taxpayer"?
  - ↗ A company;
  - ↗ An individual; and
  - ↗ A person who is not a company or an individual (for example, a trust).



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## The Maltese Tax Compliance System

### Provisional Tax - Example

- **Year end of company:** 31 December
- PT instalments:**
- 1<sup>st</sup> instalment (20%) – 30 April
  - 2<sup>nd</sup> instalment (30%) – 31 August
  - 3<sup>rd</sup> instalment (50%) – 21 December

- **Year end of company:** 31 October
- PT instalments:**
- 1<sup>st</sup> instalment (20%) – 21 December
  - 2<sup>nd</sup> instalment (30%) – 30 April
  - 3<sup>rd</sup> instalment (50%) – 31 August



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## The Maltese Tax Compliance System

### Provisional Tax –Benchmark Year

- A 2 of the PT Rules:
  - "benchmark year of assessment" with respect to a basis period means...:
  - (b) the last year of assessment in respect of which a tax return was due to be furnished before the commencement of the calendar year in which the first P.T. payment for that basis period falls due.
- A 6 of the PT Rules:
  - "the P.T. benchmark...is determined by taking **the amount of tax payable**, if any, for the benchmark year of assessment".



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## The Maltese Tax Compliance System

### Provisional Tax –Benchmark Year (Example)

- FY 1 Jan 2021 - 31 Dec 2021 (i.e. year of assessment 2022)
- PT payments made during FY 2021 are in respect of YA 2022
- Last return submitted (deadline 30 September) for YA 2020
- Therefore benchmark year of assessment – year of assessment 2020



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## The Maltese Tax Compliance System

### Provisional Tax –Benchmark Year (Example)

- FY 1 Nov 2021 - 31 Oct 2022 (i.e. year of assessment 2023)
- PT payment made during this FY are in respect of YA 2023
- Last return submitted (31 July) for YA 2020
- Therefore benchmark year of assessment – year of assessment 2020



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## The Maltese Tax Compliance System

### Final Settlement System (FSS)

- The FSS tax deduction is applicable to employment income, pensions and some ad hoc payments
- This also includes notice payment but excludes ex gratia payments and notice refunds
- The total tax deduction cannot exceed 50% of the employee's total emoluments.
- All emoluments are subject to tax deductions at source and taxpayers in receipt of certain income which has been taxed at source need not file a personal income tax return



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## The Maltese Tax Compliance System

### Final Settlement System –FS4

- The FS4 form indicates all tax deductions under the FSS mainly:
  - Single / Parent / Married Rates
  - Overseas Employment
  - Women returning to work
  - Highly Qualified Persons
  - Main income of a Professional Football Player
  - Part time rules
  - Other income



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## The Maltese Tax Compliance System

### Final Settlement System –FS4

#### Single tax rates

- Applicable if the employee is single, married couples on single computation, widower or parents who do not qualify under the parent computation or as single parents



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## The Maltese Tax Compliance System

### Final Settlement System –FS4

#### Parent tax rates

- Fall under the parent rates if :
  - Parents who are living together or
  - Parents not living together but s/he maintains under his/her custody a child or pays maintenance (established or authorised by courts) in respect of his or her child; and
  - such child is not over 18 years of age, or not over 23 years if receiving full-time education at a tertiary establishment; and
  - such child does not earn income in excess of €3,400 from gainful occupation



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## The Maltese Tax Compliance System

### Final Settlement System –FS4

#### Married tax rates

- Applicable for the following scenarios:
  - only one of the spouse is working
  - both spouses are working but one of the spouse is not earning high income



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## The Maltese Tax Compliance System

### Final Settlement System –FS4

#### Married tax rates

- Applicable for the following scenarios (cont.):
  - unmarried individuals, widows & separated or divorced persons by complying to a number of criteria
    - o Maintains under his/her custody a child under 18 years or a child over 18 years provided the child is a full-time student or does not maintain himself/herself
    - o Their child did not have an income exceeding €3,400
    - o Recognised by the DOSS as the beneficiary of child's allowance
    - o Did not receive financial assistance for maintenance of the child from the other spouse
    - o Does not reside with the spouse

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## The Maltese Tax Compliance System

### Final Settlement System –FS4

**UPDATED**

#### Special Part time Rates

- A person having a full time employment and works elsewhere on part time basis is considered as a 'special part time', and any earnings in his secondary job will be taxed at **10%** up to €10,000 / €12,000
- A person qualifies for the Special Part time rate if –
  - Work performed is less than 30 hours per week;
  - Employment is registered with Jobsplus
  - Employee does not hold an office in any board;
  - If the employee is employed full time and also performs part-time employment, the respective employers must not form part of the same organization or group of companies

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Thanks for your attention  
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