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Award in Taxation 2026/2027
Module A - Lecture 7

Taxation of Companies – The
Malta Tax Accounting System and
Dividend Distributions

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Contents

- Objectives
- Definitions
 - Tax Accounts
 - Distributable Profits
- Insights into :- Final Tax Account
 - NID – Tax effect
- Insights into :- Immovable Property Account
- Insights into :- Foreign Income Account



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Contents

- Insights into :- Maltese Taxed Account
- Insights into :- Untaxed Account
- Rule 9 election
- Mechanics – tax accounting
 - First tier allocation
 - Second tier IPA allocation
 - Second tier FTA allocation
- Dividend distributions

Objective

- Every company treated as such for income tax purposes is required to keep and allocate its distributable profits and / or losses to five tax accounts.
- Provides order of allocation
- Provides order of distribution
- Recipients of dividends – can evaluate the Maltese income tax implications at receiving end and possibility of tax refund application
- Traceability of profits

Objective

- Article 2 of the ITA
- Tax Accounts (Income) Tax Rules, S.L. 123.101 of the Laws of Malta – tax accounting revamped in 2008

Definitions

Tax Account / Taxed Accounts – Article 2

Mean any or all of the

- a. Final tax account ('FTA')
- b. Immovable property account ('IPA')
- c. Foreign income account ('FIA')
- d. Maltese taxed account ('MTA')
- e. Untaxed account ('UTA')

Distributable Profit – Article 2

“distributable profits” shall mean the total profits which are available for distribution by a company registered in Malta under the laws for the time being in force in Malta, and the distributable profits shall, for the purposes of this Act, be allocated to the following accounts, that is to say, final tax account, immovable property account, foreign income account, Maltese taxed account, and untaxed account, and for the purposes of this definition these accounts shall comprise the distributable profits as set out in the respective definitions:

Provided that in the case of a company which is neither incorporated nor resident in Malta the distributable profits shall be the profits attributable to the activities of such company in Malta and in respect of which it has registered with the Commissioner less any of such profits which the company has distributed in previous years;

Distributable Profit – Article 2

Tax Accounts

FTA – Final Tax Account

IPA – Immovable Property Account

MTA – Maltese Taxed Account

FIA – Foreign Income Account

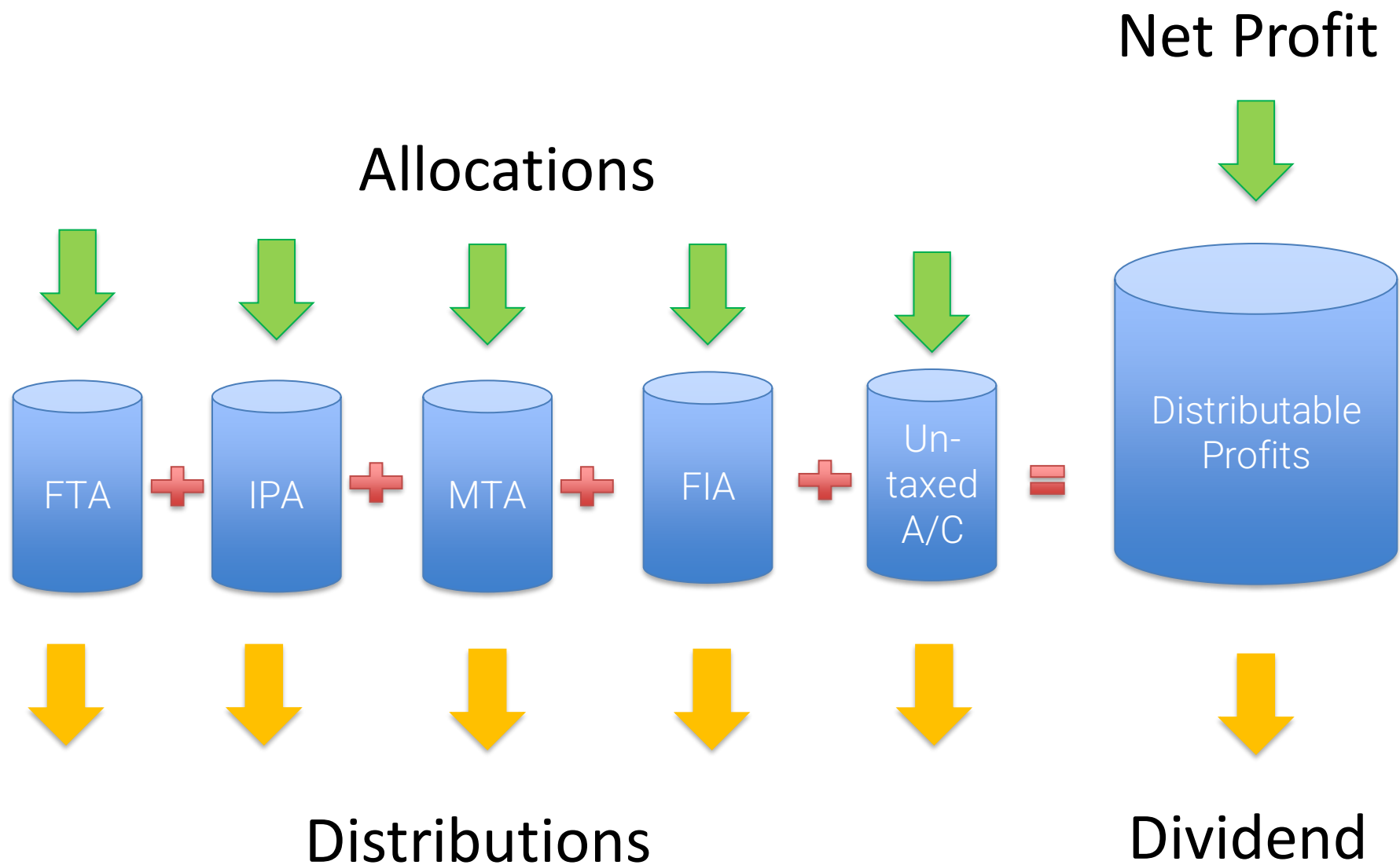
Untaxed – Untaxed Account

Distributable Profits

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Insights into: Final Tax Account

Final Tax Account – Article 2

Mean the taxed account to which an amount of distributable profit which suffered tax, calculated in such manner and in such amount as may be prescribed shall be allocated before any distributable profits allocated to any other tax account.

Allocation in FTA BEFORE
allocations to other tax
accounts



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Final Tax Account – Tax Accounts

- a. Profits after tax resulting from income which has been charged to tax under the investment income provisions
- b. Profits which have been exempt from tax under the provisions of any Maltese law and where the distribution of such profits by the company is exempt from tax in the hands of the shareholders

Ex: Rule 5 – Merchant Shipping (Taxation and other Matters Relating to Shipping organisations)

'No further tax under the Income Tax Act shall be charged or payable on the income of that shipping organisation, to the extent that such income is derived from shipping activities'

'The distribution of profits derived from shipping activities or from other transactions referred to in sub-regulation (1) shall be exempt from tax under the Income Tax Act in the hands of the shareholders.'



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Final Tax Account – Tax Accounts

- c. Dividends paid out of profits allocated to the FTA of another company
- d. Profits after tax derived from the transfer of immovable property where such transfer is chargeable under Art. 5A
- e. Gains or profits chargeable to tax in accordance with the provisions of Article 23 of the Act – Petroleum Profits
- f. Any profits after tax which under the provisions of Maltese law are not subject to tax when such profits are distributed by a company to any person and where upon such a distribution no person is entitled to claim any tax credit in respect of any tax paid on such profits

Final Tax Account – Tax Accounts

- g. Amount which should be allocated to the MTA computed in accordance with rule 13 of the Sale of Agriculture Produce Rules
- h. Profits after tax resulting from transfers in accordance with the provisions of article 27G of the Act
- i. Profits resulting from any grant or subsidy where the distribution of such profits is exempt from tax in the hands of the shareholders
- j. Profits after tax resulting from rents on which Art. 31A to 31D applies

LN 194
of 2019



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Final Tax Account – Tax Accounts

The amount of chargeable income the tax on which has been relieved from payment by any tax credits shall after deducting the tax chargeable thereon and adding the amount of tax credits utilised to relieve the payment of such tax be allocated to the Maltese taxed account.

Implication – tax refund applicability



Final Tax Account – Tax Accounts

- LN 38 of 2018 – 2nd February 2018
- Profits allocated to the FTA
- Where profits of a company are relieved from tax through the deduction referred to in paragraph (o) of sub article (1) of article 14 of the Act, or any rules issued in terms of that paragraph, an amount corresponding to 110% of the amount of profits which are so relieved from tax shall be allocated to the company's FTA in the following manner:

Final Tax Account – Tax Accounts

- an amount corresponding to 100% of the amount of profits which are so relieved from tax shall be allocated directly to the final tax account (“**direct allocation**”); and
- an additional reallocation of profits of an amount corresponding to 10% of the relieved profits, out of the tax account to which such relieved profits would, ignoring the provisions of this sub-rule, otherwise fall to be allocated (“**additional reallocation**”)

Final Tax Account – Tax Accounts

- Provided that if the amount of the additional reallocation exceeds the total profits of the undertaking for the particular basis year that would have ignoring the provisions of this sub-rule, been allocated to the tax account to which such profit would otherwise have been allocated, any such excess shall be ignored for the purposes of the additional reallocation

Final Tax Account – Tax Accounts

Profit and Loss									
		Tax Accounting							
Chargeable Income	100		FTA	IPA	MTA	FIA	UA	R/E	
NID - 90% limitation	90								
Chargeable income after	10	Direct Allocation	90		6.5				96.5
Tax	3.5	Additional Allocation	6.5		-6.5				0
			96.5	0	0	0	0		96.5
Profit after tax	96.5								
Tax effect	3.50%								



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Final Tax Account – Tax Accounts

- i.e.
- A reallocation of 10% of the relieved profits out of the MTA or FIA account. In the circumstance that MTA/FIA profits are less than the required 10% reallocation, the reallocation is capped at the available MTA/FIA profits and the shortfall is ignored for both current and subsequent tax accounting periods



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Insights into: Immovable Property Account

Immovable Property Account – Article 2

- Mean the taxed account to which distributable profits which have suffered tax and which are not allocated to the final tax account calculated in such manner as may be prescribed shall be allocated before any distributable profits are allocated to the other taxed accounts

Allocation after FTA to IPA if
profit suffered tax



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Immovable Property Account – Tax Accounts

Primary Allocation/ 1st Tier Allocation

- a. Dividends paid out of profits allocated to the IPA of another company
- b. The amounts of chargeable income after tax resulting from any profits or gains in respect of which a company has exercised its option to make an election in accordance with Rule 9
- c. Any profits, gains or income derived, directly or indirectly from immovable property situated in Malta

Immovable Property Account – Tax Accounts

- c. Any profits, gains or income derived, directly or indirectly from immovable property situated in Malta
 - 1. The amount of chargeable income after tax resulting from any profits or gains of whatever nature derived from the transfer of such immovable property or of any rights whatsoever on such property or in relation thereto
 - 2. Profit or gains after tax however described derived from the disposal of shares or other interest in any entity which, directly or indirectly, principally owns such immovable property

Immovable Property Account – Tax Accounts

- c. Any profits, gains or income derived, directly or indirectly from immovable property situated in Malta
- 3. The amount of chargeable income after tax derived from rents, premiums, provision of accommodation and any income or gains however described and of whatever nature derived, directly or indirectly, from such immovable property including:-
 - Gains or profits derived from any timeshare operation or any other operation of a similar nature
 - Gains or profits derived from the provision of accommodation as defined in the Value Added Tax Act

Immovable Property Account – Tax Accounts

- c. Any profits, gains or income derived, directly or indirectly from immovable property situated in Malta
- the amount of chargeable income after tax resulting from profits directly derived from, and not merely from the utilisation of, services provided through the use of cables, wires, pipes and any other material, device or apparatus, where such cable, wire, pipe, material, device or apparatus is annexed to a tenement or installed in the ground permanently to remain incorporated therewith. Ex provision of electricity, energy, gas, fuel, water, telephone services, telecommunication infrastructures, electronic communications services, electronic communication networks, associated facilities, services and data, radio and television

Immovable Property Account – Tax Accounts

- c. Any profits, gains or income derived, directly or indirectly from immovable property situated in Malta
- 4. The amount of chargeable income after tax, derived from work carried out on or in relation to such immovable property consisting of brokerage and professional services, construction work, project management of construction work and work of tradesmen
- 5. The amount of chargeable income after tax resulting from profits derived from the provision of management services in relation to any activity as a result of which income is derived from the provision of accommodation.

Immovable Property Account – Tax Accounts

Works of tradesmen

- Work of tradesmen shall include but shall not be limited to, work consisting of or related to electrical works, plumbing, tile laying, pointing and rendering, plastering, painting, excavation and clearing of site, demolition works, dry wall gypsum works and any other work carried on or in relation to such immovable property.

Immovable Property Account – Tax Accounts

- c. Any profits, gains or income derived, directly or indirectly from immovable property situated in Malta
- 5. Any other profits where the Commissioner for Revenue is of the opinion that the said profit are directly or indirectly derived from such immovable property and in such case the Commissioner may determine the manner in which such profits are to be determined.

Insights into: Foreign Income Account

Foreign Income Account – Art 2.

- a. Profits resulting from royalties and similar income arising outside Malta and from dividends, capital gains, interest, rents, income or gains derived from a participating holding in a company not resident in Malta or from the disposal of such holding, and any other income derived from investments situated outside Malta, which are liable to tax in Malta and are receivable by a company registered in Malta.
- b. Profits resulting from investments, assets or liabilities situated outside Malta and either licensed as a bank in Malta or in possession of a license granted under the provisions of the Financial Institutions Act

Foreign Income Account – Art 2.

- c. Profits or gains of a company registered in Malta, which are liable to tax in Malta and attributable to a permanent establishment (including a branch) situated outside Malta.
- d. Profits resulting from dividends paid out of the FIA account of another company.
- e. Profits or gains resulting to a company registered in Malta under the Insurance Business Act from the business of insurance in relation to risks situated outside Malta
- f. Specific rules apply to companies which are licensed as a bank in Malta or which form part of a banking group as defined (more than 95% average deposit test)

Insights into: Maltese Taxed Account

Maltese Taxed Account – Art 2.

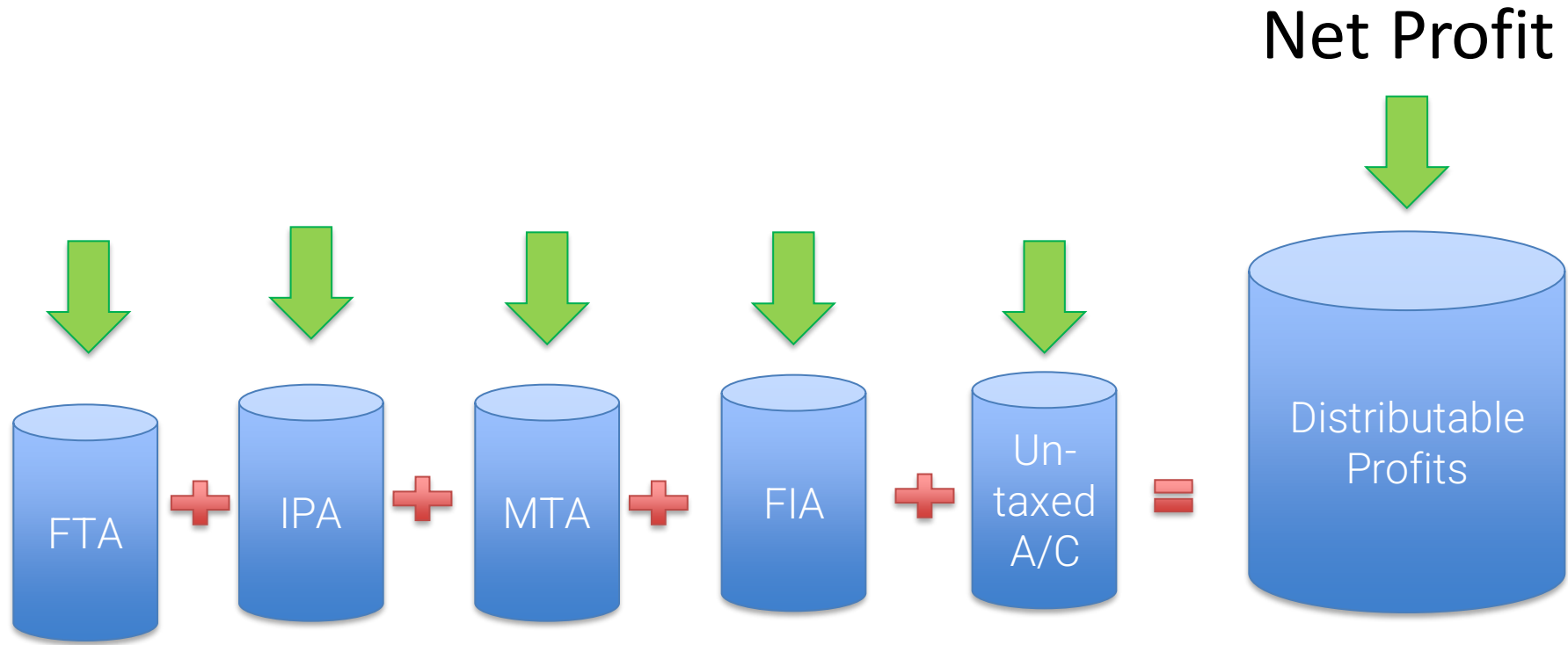
- a. Means any of those profits of a company which have suffered tax and which have not been allocated to the FIA, FTA and IPA are allocated to the MTA.

Insights into: Untaxed Account

Untaxed Account – Art 2.

- a. Consist of those profits (or losses as the case may be), which represent the total distributable profits (a positive amount) or the total accumulated losses (a negative amount) as the case may be, and deducting therefrom the total sum of the amounts allocated to other taxed accounts
- b. Difference between accounting profits and taxed profits
- c. Balancing account
- d. Ex:- Adjustment in tax computations, deferred tax, over/under provision of current tax

Primary Allocations



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Rule 9 election

Rule 9 election

- Disregard the operation of the FIA and MTA and therefore allocate any profits that would otherwise be allocated to the MTA and FIA to the IPA
- Election – made by notice – which shall indicate acceptance by all the directors or by company secretary where such election is approved by the board of directors
- Election – applies to all subsequent years
- Renounced upon a request to the Commissioner who have absolute discretion – Permission in writing + conditions as deems fit and reasonable
- Provided that company reallocates its profits after tax to its tax accounts to the tax accounts as from the year of assessment from which the election becomes effective. i.e. change in b/f balance of tax accounts

Rule 9 election

- All secondary IPA allocations do not apply to companies that opt for such an election unless one of the related companies as defined does not opt for such an election.
- Tax implications of rule 9 election evaluated ex. tax refunds

Mechanics: Tax Accounting

Immovable Property Account – Tax Accounts

Secondary Allocation / 2nd Tier Allocation

1. Interest, fees or any other consideration howsoever described derived, directly or indirectly, from the granting of loans or from any form of credit to finance the acquisition, development, construction, refurbishment, renovation of such immovable property or any right thereon; including professional fees related thereto (including fees related to the acquisition of finance) and any other matter which increases or enhances the value of such immovable property or any right thereon; and
2. Insurance premiums related to the insurance of such property

Immovable Property Account – Tax Accounts

Secondary Allocation/ 2nd Tier Allocation

3. The amount of annual market rent of such immovable property owned and used by the company for the purpose of its activities (excluding property which is rented by the said company to other parties) calculated by multiplying the aggregate surface area (m²) by EUR 250 per annum

Immovable Property Account – Tax Accounts

Secondary Allocation/ 2nd Tier Allocation

3. Where a company uses immovable property and that immovable property is owned by a **'related person'**, for no consideration or for a consideration which in the opinion of the Commissioner is less than the market rental value of that property and the said consideration is less than EUR 250 per square meter per annum, the said immovable property shall be deemed to be owned by the said company and the amount which shall be allocated to the IPA shall be reduced by the amount of consideration paid by the said company to the related person

Immovable Property Account – Tax Accounts

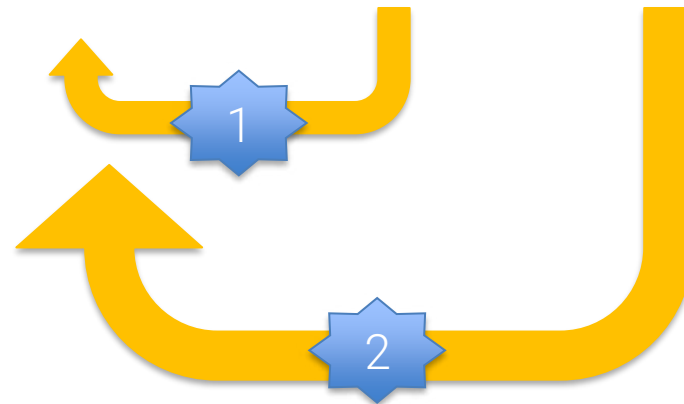
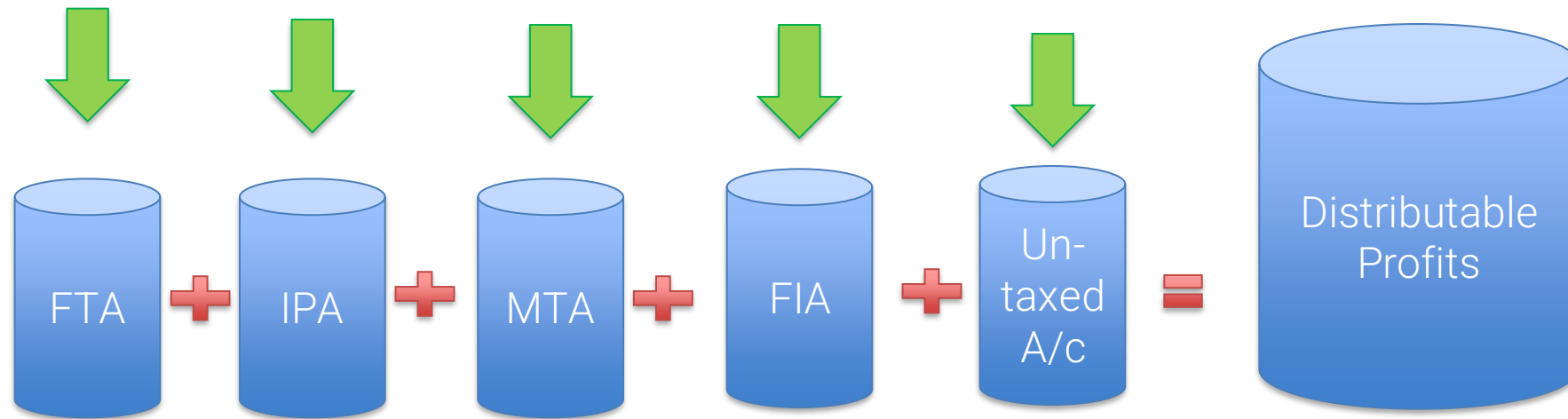
Secondary Allocation/ 2nd Tier Allocation

A person is considered to be related if:-

1. That person and the company are directly or indirectly, controlled or beneficially owned to the extent of more than 25% by the same persons; or
2. That person owns, directly or indirectly, more than 25% of the ordinary share capital or voting rights of the company; or
3. That person in any capacity whatsoever including that of a trustee, holds the said property or receives the said consideration for and on behalf of or for the benefit of a related person.

Net Profit

Primary Allocations



Secondary Allocations



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Immovable Property Account – Tax Accounts

‘Spill over’ of Secondary Allocation / 2nd Tier Allocation

Spill over to related parties:

1. Secondary IPA allocations are based on the amount of AMR and Gross Interest and Premia
2. Any excess AMR and Gross Interest and Premia at the level of a particular company are reallocated from the MTA and FIA of related companies to the IPA of the related company

Immovable Property Account – Tax Accounts

‘Spill over’ of Secondary Allocation / 2nd Tier Allocation

Spill over to related parties:

1. In the event that the 2nd Tier allocation cannot be made by a company because there are no or insufficient taxable profits in the MTA and / or FIA, the amount of unallocated 2nd tier allocations must be done by a related company
2. The amount of unallocated 2nd tier allocations that can be taken over by the related company cannot exceed the amount of profits that the related company has allocated to its MTA and FIA for that year.

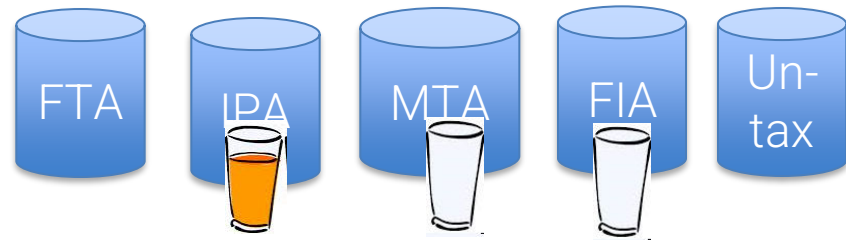
Immovable Property Account – Tax Accounts

‘Spill over’ of Secondary Allocation / 2nd Tier Allocation

A company is related to another if at the end of the year preceding the relevant YoA both companies are:-

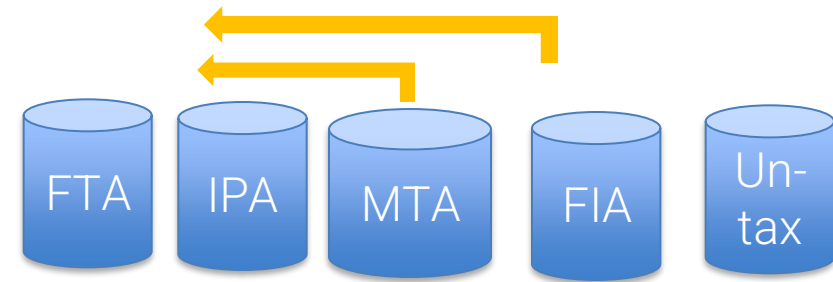
1. Resident in Malta; AND
2. One is a subsidiary of the other or both are subsidiary companies of a third company resident in Malta

Company A



IPA:- Bal.
Unallocated

Company B



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Immovable Property Account – Tax Accounts

‘Spill over’ of Secondary Allocation / 2nd Tier Allocation

A company is deemed to be a subsidiary of another company (parent company) if:

1. More than 50% of its ordinary share capital and more than 50% of its voting rights are owned directly or indirectly by the parent company; or
2. The parent company is beneficially entitled either directly or indirectly to more than 50% of any profits available for distribution to the ordinary shareholders of the subsidiary company; or
3. The parent company would be beneficially entitled either directly or indirectly to more than 50% of any assets of the subsidiary company available for distribution to its ordinary shareholders on a winding up



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Immovable Property Account – Tax Accounts

‘Spill over’ of Secondary Allocation / 2nd Tier Allocation

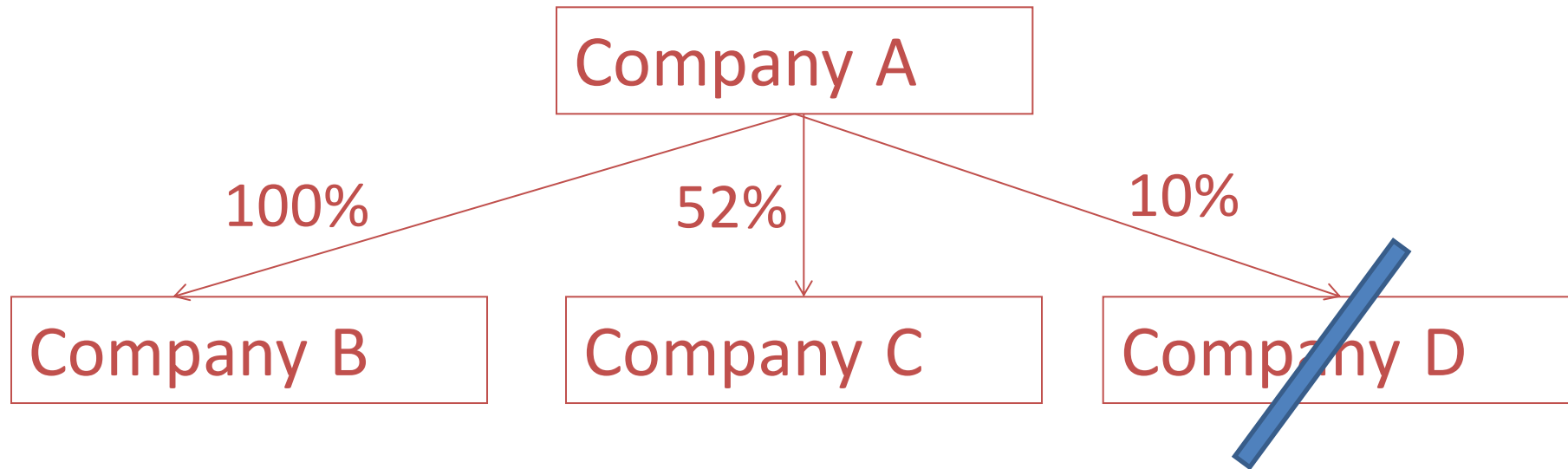
- Notwithstanding, a company which has made a Rule 9 election is not considered to constitute a related company for the purpose of this rule
- However the Commissioner for Revenue may treat a company as related to another company if in his opinion the relationship between the two companies has been structured with the sole or main purpose of circumventing these provisions

Immovable Property Account – Tax Accounts

‘Spill over’ of Secondary Allocation / 2nd Tier Allocation

- Where company is related to more than one company, the rules establish a hierarchy i.e. the order in which the company is to allocate its unallocated second-tier allocations to the related companies
- Consider – the percentage of beneficial entitlement that the parent company of the group has to the amounts of distributable profits allocated to the MTA and the FIA for that particular year of the various related companies
- The parent company shall be deemed to hold a 100% beneficial entitlement to the amount of distributable profits derived during the year and which shall be allocated to the parent company's MTA and FIA

Immovable Property Account – Tax Accounts



Immovable Property Account – Tax Accounts

‘Spill over’ of Secondary Allocation / 2nd Tier Allocation

- Notwithstanding....as a result of a change in the direct or indirect shareholders of a company (Company A) or a change in the rights attached to the shares issued by Company A, such company becomes related to another company (Company B) , the Commissioner may on application made by either Company A or B in his absolute discretion determine that such companies are not related to one another.
- Provided – Commissioner will only issue such determination where, in his opinion, the relationship between the companies has not been structured with the sole or main purpose of obtaining any advantage which has the effect of avoiding, reducing or postponing liability to tax, or of obtaining any refund or set-off of tax.



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Mechanics:- Tax Accounting and NID

- In the event that a company is required to do Secondary Allocations in term of the general tax accounting rules i.e.
 - A) Annual Market Rent
 - B) Gross Interest / Premiums allocation
 - C) Related Party rules

.....such secondary allocations should be made before reallocation required for NID

Mechanics:- Tax Accounting and NID

- Second tier IPA allocation precede FTA 2nd tier allocations
- Second tier IPA allocations are c/f or moved to related companies
- Second tier FTA allocations are ignored

Mechanics:- Tax Accounting and NID

<u>Profit and Loss</u>		<u>Tax Accounting</u>						
			FTA	IPA	MTA	FIA	UA	R/E
Income	100							
Tax	35	Direct Allocation	0		65			65
Profit after tax	65	2nd tier IPA allocation		65	-65			
			0	65	0	0	0	65
Tax effect	35%							
		AMR for the year		100		AMR C/f		35



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Mechanics:- Tax Accounting and NID

<u>Profit and Loss</u>		<u>Tax Accounting</u>						
			FTA	IPA	MTA	FIA	UA	R/E
Income	100							
NID - 90% limitation	18	Direct Allocation	18		53.3			71.3
Chargeable income	82	2nd tier IPA allocation		52	-52			0
Tax	28.7	2nd tier FTA allocation	1.3		-1.3			
Profit after tax	71.3		19.3	52	0	0	0	71.3
Tax effect								
	28.70%							
		NID		60				
		90% rule		90% of (100-80 [^])		=18		
				[^] 80=52*100/65				
		AMR for the year		52				
		AMR c/f		0				



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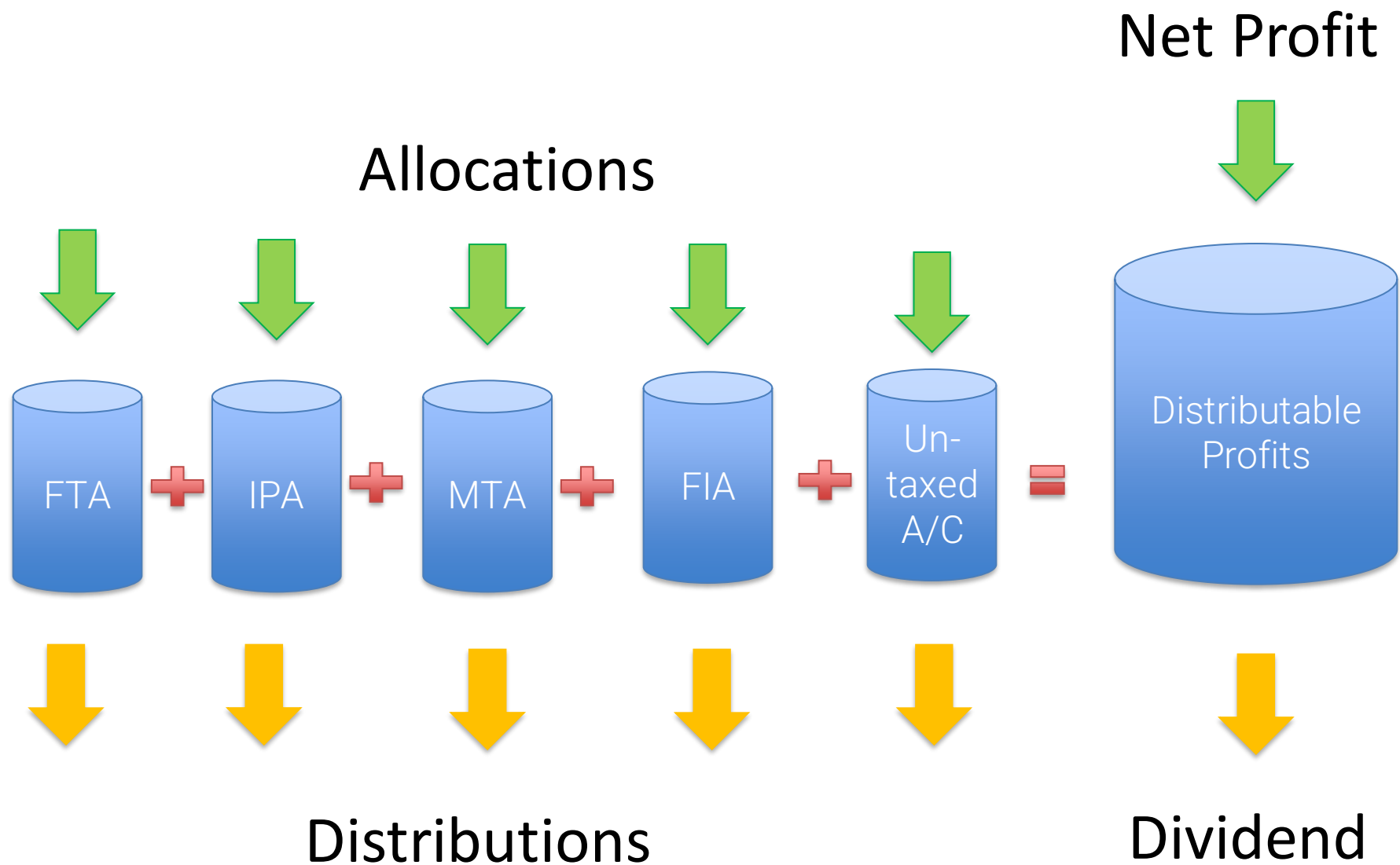
Materially incorrect tax accounting

- Where allocation of profit is materially incorrect the Commissioner may regard that tax return as not being complete in all material respects.
- Considered as no return filed – ITMA Art. 10(5)

Anti avoidance

- Where a person enters into artificial arrangements intending to shift profits between taxed accounts to create an entitlement to a refund in terms of Article 48(4) or (4A) of the ITMA the provisions of article 48(10) of ITMA apply
- Penalties, additional tax and interest

Dividend Distribution



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Full Imputation Tax

Update SL 123.217 –
2/09/2025 Final Income
Tax Without Imputation
Regulations

- Article 59(1)(a) - Deduction of Tax
- Every company resident in Malta, not being a company referred to in paragraph (b), shall be entitled to deduct from the amount of any dividend, other than a dividend paid out of distributable profits allocated to the untaxed account and other than a dividend referred to in article 12(1)(p), paid to any shareholder, a tax at the rate paid or payable by the company, relief of double taxation being left out of account, on the income out of which such dividend is paid:
- Article 31 – Income from certain Dividends to include tax thereon
- The income of a person arising from a dividend paid by a company liable to tax under this Act shall, where such tax has been deducted therefrom, be the gross amount before making such deduction; where no such deduction has been made, the income arising shall be the amount of the dividend increased by an amount on account of such taxes corresponding to the extent to which the profits, out of which the said dividend has been paid, have been charged with such taxes.



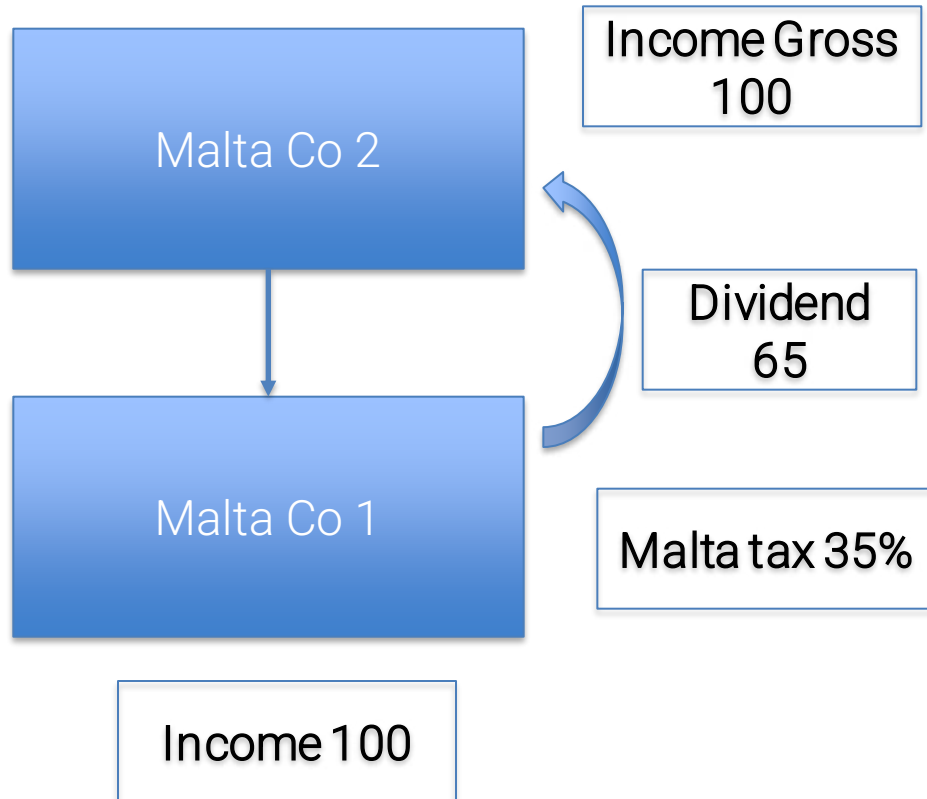
Full Imputation Tax

- Article 60 – Set off of tax
- Any tax which a company had deducted or is entitled to deduct under Article 59 from a dividend paid to a shareholder.....and any tax applicable to the share to which any person is entitled in the income of a body of persons assessed under this Act, shall, when such dividend...or share, is included in the chargeable income of such shareholder or person, be set off for the purposes of collection against the tax charged on that chargeable income.



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Full Imputation Tax System



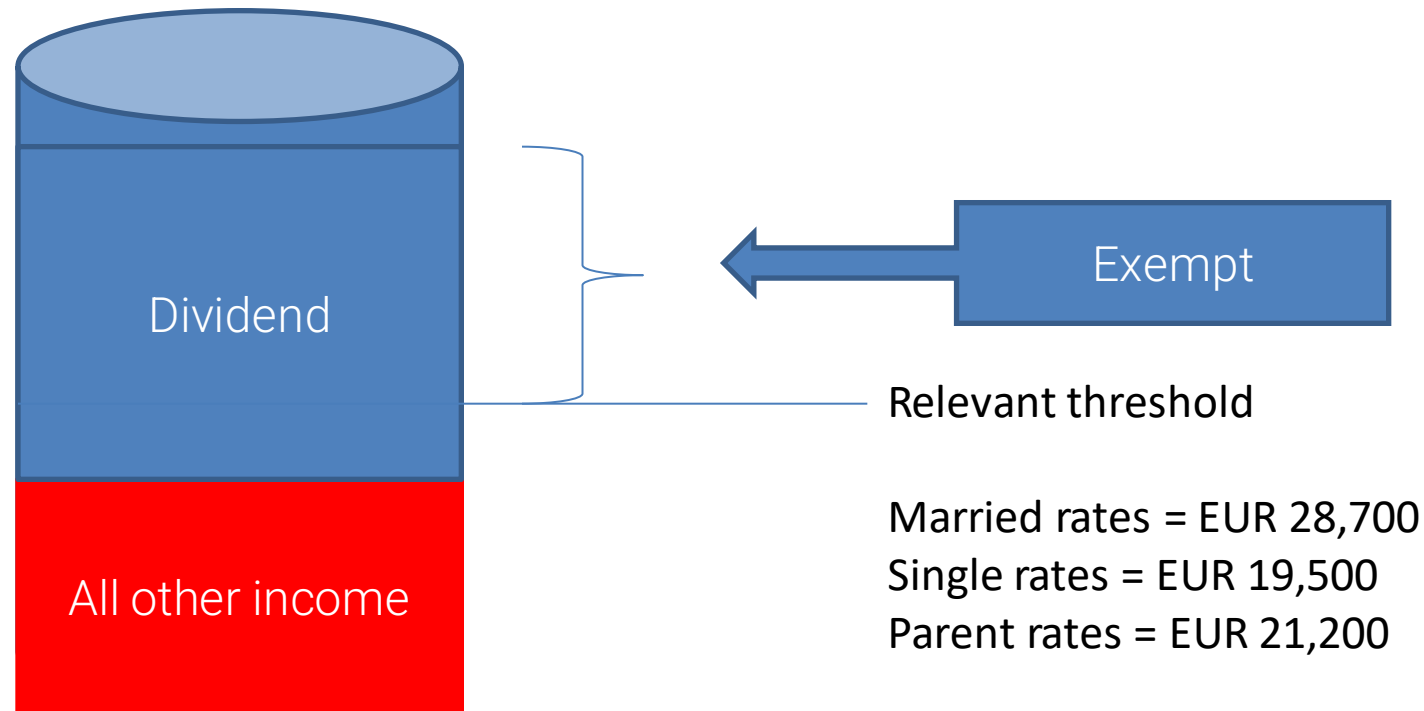
Gross Dividend	100
Tax at 35%	35
Imputation Credit	-35
Tax Due	0

Chargeable Income	100
Tax at 35%	35
Net Profit	65



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Article 12(1)(c)(iii) – Exemption and Full Imputation



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Untaxed Dividend – Article 62

- Every company shall, on payment of untaxed dividend to a **recipient**, deduct therefrom tax at the rate of 15%
- Every amount deducted shall be a debt due from such company to the Commissioner payable not later than the fourteenth day following the end of the month in which such dividend was paid and shall be recoverable as such:
- Provided that the provisions of this article shall not apply in respect of untaxed dividend payments to persons who are exempt from tax.

Untaxed Dividend – Recipient – Article 61

- A person, other than a company, resident in Malta in the year in which a dividend is received by him or by any person on his behalf
- A non-resident person (including a non- resident company) who is owned and controlled by directly or indirectly, or who acts on behalf of, an individual who is ordinarily resident and domiciled in Malta
- A trustee of a trust where the beneficiaries of such trust are persons referred to in subparagraphs (i) and (ii)
- An EU/EEA individual (and his or her spouse where applicable) in the circumstances envisaged by the first and second provisos to article 56(1)(c)



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Untaxed Dividend – Article 63/64/65

- Art 64 -A recipient of a dividend shall not be obliged to disclose the dividend in any return made pursuant to the provisions of this Act
- Art 64 - No person shall be charged to further tax under this Act in respect of the dividend
- Art 65 -A recipient of an untaxed dividend may declare such dividend on his tax return and where a declaration is made as aforesaid any tax (or repayment) due shall be determined as if article 64 did not apply, and any tax withheld pursuant to article 62 shall be credited against the recipient's income tax liability and, where applicable, shall be available for any refund which may be due in respect of that tax for the relevant year of assessment.

Untaxed Dividend – Article 66

- Where an untaxed dividend is paid to a person, who is not a recipient as defined in article 61, such dividend shall not be charged to tax under this Act in the hands of such person and where such person is not resident in Malta such person shall not be obliged to disclose the existence of the dividend in any return made pursuant to the provisions of the Income Tax Acts

No obligation to disclose – Article 68

- Any person who is not resident in Malta or any individual who is resident in Malta and who is in receipt of a dividend paid out of profits allocated to any of the taxed accounts other than the final tax account shall not be obliged to disclose the existence of such dividend in any return made pursuant to the provisions of the Income Tax Acts.
- No person shall be charged to further tax under this Act in respect of the income referred to in paragraph (a)

FTA dividend – Article 68

- Any dividends paid out of profits allocated to the final tax account shall not be charged to further tax and shall not form part of the chargeable income of any person and no person may claim a credit or refund in respect of any tax directly or indirectly paid on such profits and for the purpose of this paragraph a dividend received from a company not registered in Malta shall to the extent that such dividend, directly or indirectly comprises a dividend paid by a company registered in Malta from profits allocated to the final tax account, shall, to that extent, be deemed to be a dividend paid by such company registered in Malta from profits allocated to the final tax account directly to the person in receipt of the dividend from the company not registered in Malta.

Order of distribution – Article 68

- A dividend paid by a company shall be paid out of profits allocated to the immovable property account before any profits allocated to the Maltese taxed account are distributed.

Summary

- Full imputation system – eliminates economic double taxation
- Dividends distributions out of the MTA, FIA and IPA are taxed at the level of the recipient under the full imputation system
- Dividend distributions from the FTA are not taxable in the hands of the recipient.
- Dividend distributions out of the untaxed account may attract a withholding tax of 15%

Questions

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