MALTA
INSTITUTE
OF TAXATION

Award in Taxation
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Module A – Lecture 9

Fiscal Consolidation

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Date: 29/10/2026

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Consolidated Group (Income Tax) Rules

Contemplated in Maltese Tax Law…
...Article 22A, ITA

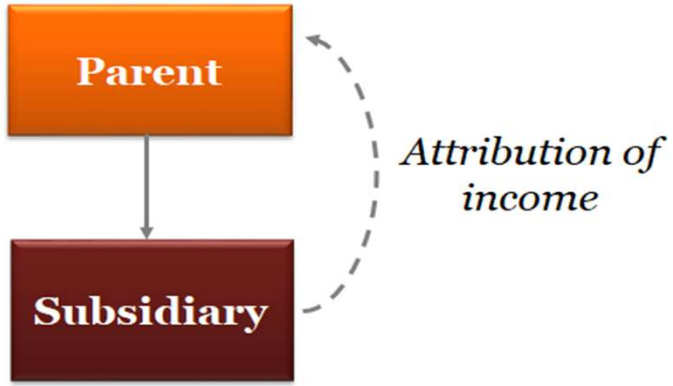
"The Minister for finance may make rules providing for bodies of persons under common ownership to be entitled to elect to compute and bring to charge their chargeable income or losses as the case may be, on a collective basis, and for the consequent carrying out of the relevant provisions and obligations under the Income Tax Acts as if they are a single body of persons, subject to such terms and conditions as may be laid down in such rules."

What is the purpose?

To allow companies which form part of a group (as defined) to elect to be treated as one single taxpayer.

How will this be achieved?

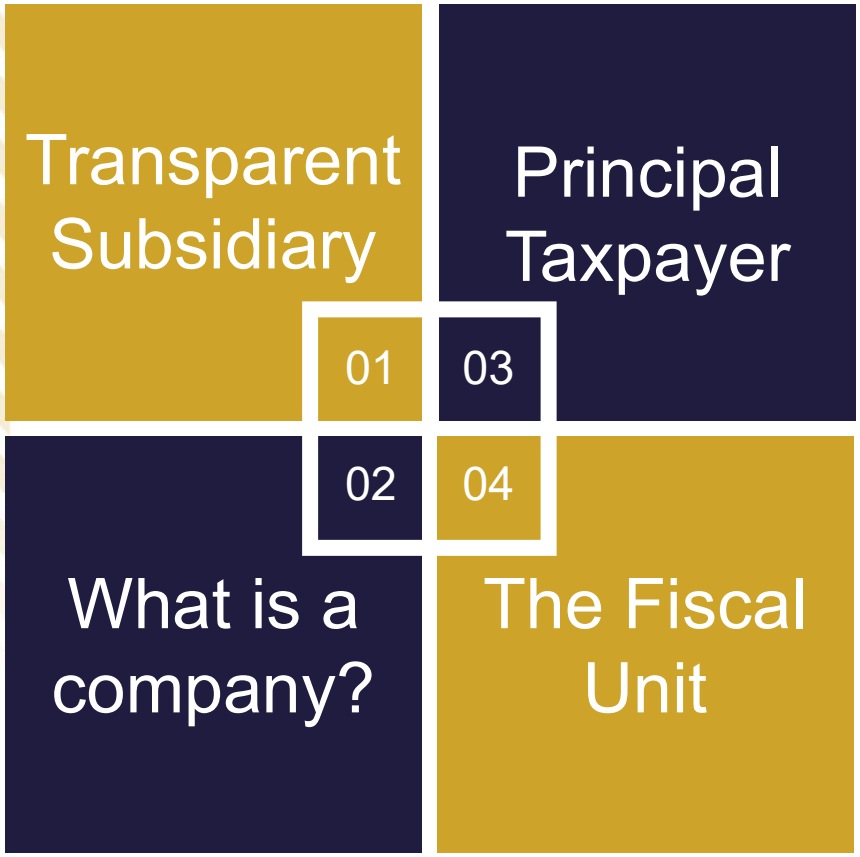
By allowing a parent company to elect that its subsidiary and itself will form a fiscal unit, resulting in the subsidiary being treated as transparent.



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What is income tax consolidation?

Key terminology



01 In order to be treated as transparent, the subsidiary must be a “95% subsidiary” of the parent

02 "Company” has largely the same meaning as defined in the ITA - it also includes trusts and foundations

03 The ultimate parent to which all income is attributable, is referred to as the “principal taxpayer”

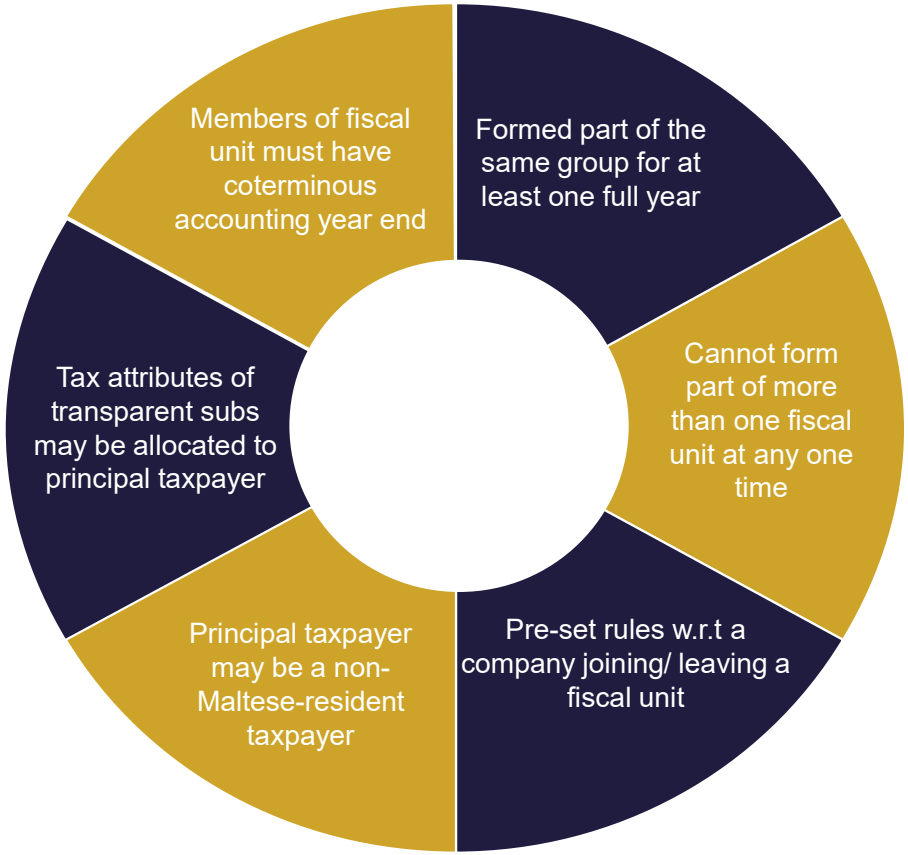
04 The ultimate parent and its transparent subsidiaries are referred to as a “fiscal unit”

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What is income tax consolidation?

Other features



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Formation of a fiscal unit

How is a fiscal unit formed? (1)

Article 3(6) of the Rules - *"The fiscal unit shall be registered as such…"*

- Principal taxpayer - shall assume the rights, duties and obligations under the ITA;
- Transparent subsidiaries - suspension of rights, duties & obligations under the ITA, without prejudice to the FSS Rules, during the time that the fiscal unit exists;
- When is the election deemed to become effective?
  - Effective as from the year of assessment in which it is made (and therefore, to some extent, retrospective) unless a tax return for that year of assessment would have already been filed

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Formation of a fiscal unit

How is a fiscal unit formed? (2)

- The parent company makes an election in order for itself and its qualifying subsidiary/ies to form a fiscal unit;
- Where the subsidiary is not a 100% subsidiary, such election should include the approval of all minority shareholders;
- The subsidiary/ies must have the accounting periods beginning and ending on the same dates as the accounting period of the parent company (provisions of sub-article (2) of article 18 of ITA applies);
- No company shall form part of more than one fiscal unit at any one time.

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Joining a fiscal unit

Treatment of tax balances

- The election should make reference to whether the principal taxpayer has opted for:

  (i) the balance of any item allowed to be carried forward; and

  (ii) the balance of any profits allocated to the tax accounts (excluding the untaxed account),

  to be a balance of the principal taxpayer;

- This effectively allows unabsorbed capital allowances to be claimed by the principal taxpayer, as long as the plant and machinery/industrial buildings are used and employed within the fiscal unit;
- Approval of the minority shareholders (if any) is required in order to aggregate balances;
- What happens to the balances when the principal taxpayer does not opt for the above?

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Leaving a fiscal unit

What are the main considerations?

- What are the circumstances where the fiscal unit is no longer deemed to exist?
- Can a new fiscal unit be formed from the 'old fiscal unit'?
- What happens to the balance of any trading loss, unabsorbed deductions for wear and tear and losses claimed under the group relief provisions?
- Specific provisions regulating the tax position of any assets owned by a company when it leaves the fiscal unit

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Calculation of chargeable income

Key considerations

Transactions between entities in fiscal unit are ignored, except:

- Transfers of immovable situated in Malta subject to a final tax
- Dividends from profits derived by transparent entity prior to joining fiscal unit

- For the purpose of claiming NID, risk capital is calculated on the basis of consolidated figures.



- Income of fiscal unit determined on a consolidated basis
- Deemed derived by principal taxpayer
- Interests in 3rd parties deemed held by principal taxpayer

- In the name of principal taxpayer
- Where a shareholder is registered for Maltese income tax refund purposes, the Rules allow the fiscal unit to apply a reduced rate of income tax (thus leading to an effective tax rate of 5% without the need to distribute a dividend)

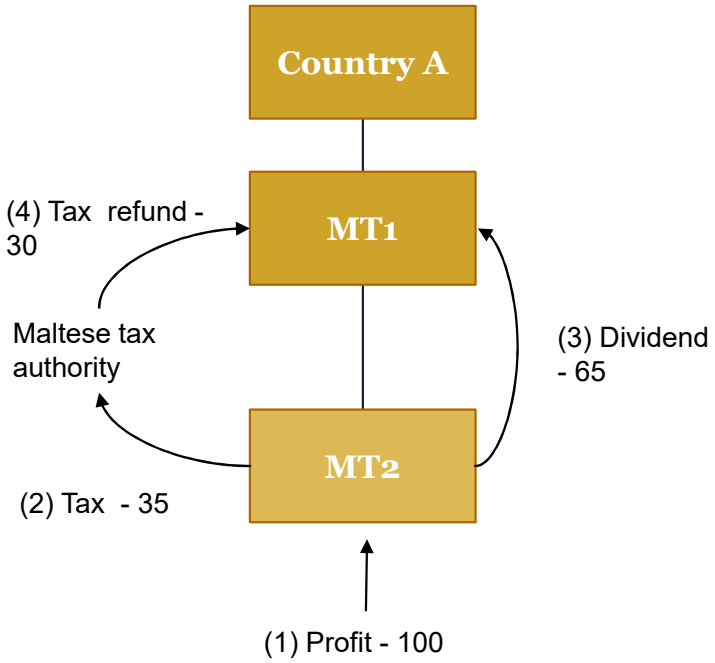
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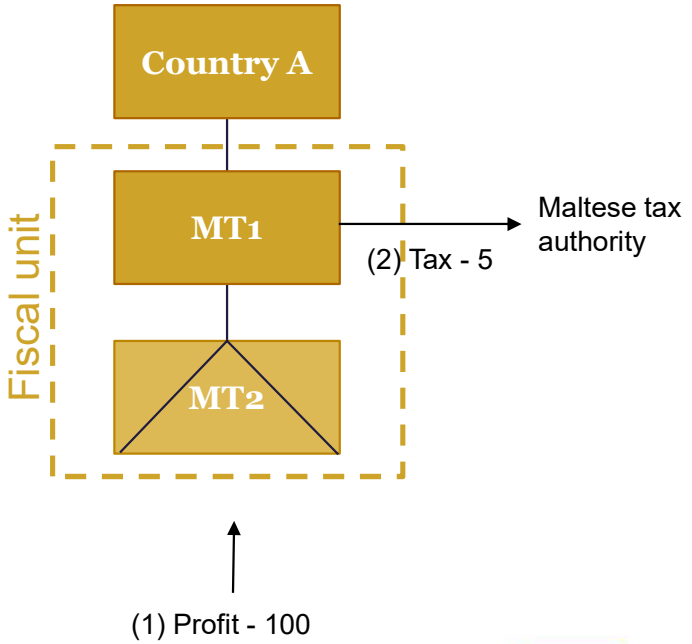
Calculation of chargeable income

Effective tax rate

Refunds Mechanism



Tax consolidation



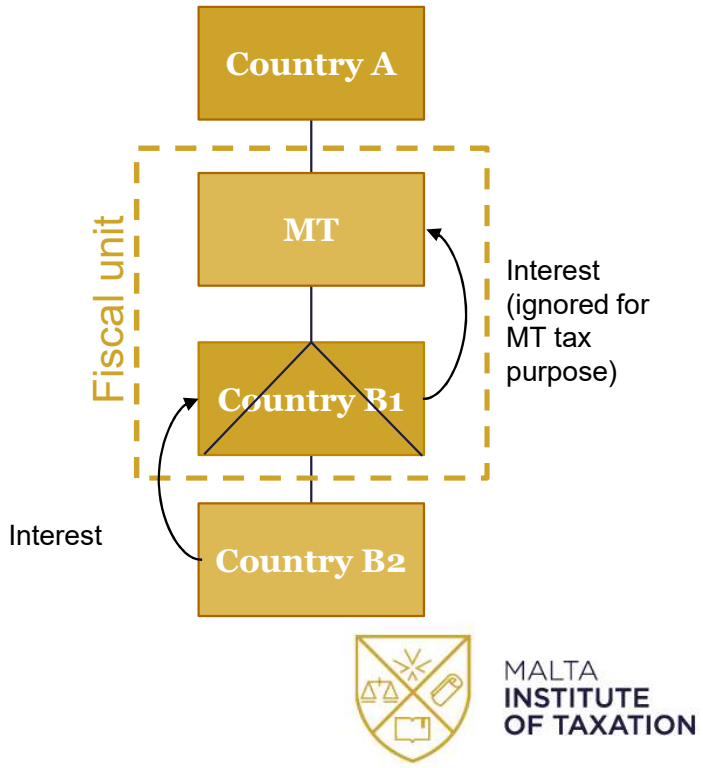
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Calculation of chargeable income

Implications of non-resident entities in the fiscal unit

- Members of the fiscal unit may include both Maltese-resident and non-resident companies
- Where a non-resident company elects for inclusion in the fiscal unit, the non-resident company (e.g. Country B1) may be considered to be a branch of the principal taxpayer if there is sufficient substance in Country B
- Accordingly, principal taxpayer (MT) may either bring profits attributable to branch within the scope of Maltese income tax net or else claim branch exemption thereon



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Calculation of chargeable income

Implications of non-resident entities in the fiscal unit (cont.)

- Non-resident transparent subsidiary:

  - Its income/gains are deemed attributable to a permanent establishment of the principal taxpayer

- Non-resident principal taxpayer - attribution of income:

  - All income/gains derived by resident transparent subsidiaries

  - Income/gains derived by non-resident transparent subsidiaries arising in Malta



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Calculation of chargeable income

Deductibility of expenses

- Primarily, expenses must be deductible in terms of Articles 14 and 26 of the ITA;
- Secondly, one should demonstrate that expenses would have been deductible against income had the fiscal unit not existed - might not be easily determined since ignored transactions are looked through;
- Ensures that - Rules are revenue neutral for the government
  - No claim for deduction for expenses which are non-deductible under normal principles
- However, certain expenses that might not be deductible at the level of the parent may become deductible in the context of a fiscal unit – e.g. Interest payable on debt financing used for the purposes of the operations of transparent subsidiaries;
- NID - If the principal taxpayer is non-resident, risk capital is limited to that attributable to the fiscal unit.

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Calculation of chargeable income

Tax consolidation (example)

ignored transactions

Current System	Income	Expense	Chargeable income
Company A (sells to Co B)	1,200	(1,000)	200
Company B (buys from Co A)	10,000	(1,200)	8,800
Total			**9,000**

Consolidated Group	Income	Expense	Chargeable income
Company A	10,000	(1,000)	9,000
Total			**9,000**

Malta tax paid by the principal taxpayer amounts to €450 (i.e. €9,000 * 5%)

The fiscal unit can only claim a deduction for the interest expense of €1,000 as long as the €1,000 is deductible against income earned by Company A (i.e. €1,200 in this case) which would have been deductible as an expense against income earned by Company B in the absence of the fiscal unity.

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Calculation of chargeable income

Effective tax rate

$$\text{Rate} = 35\% - \frac{\text{tax refunds claimable by members of the fiscal unit}}{\text{chargeable income of the fiscal unit}}$$

- These rules should essentially allow a fiscal unit, with non-Maltese resident and domiciled shareholders, to access the effective reduced tax rate without the need to distribute dividends and apply for a tax refund;

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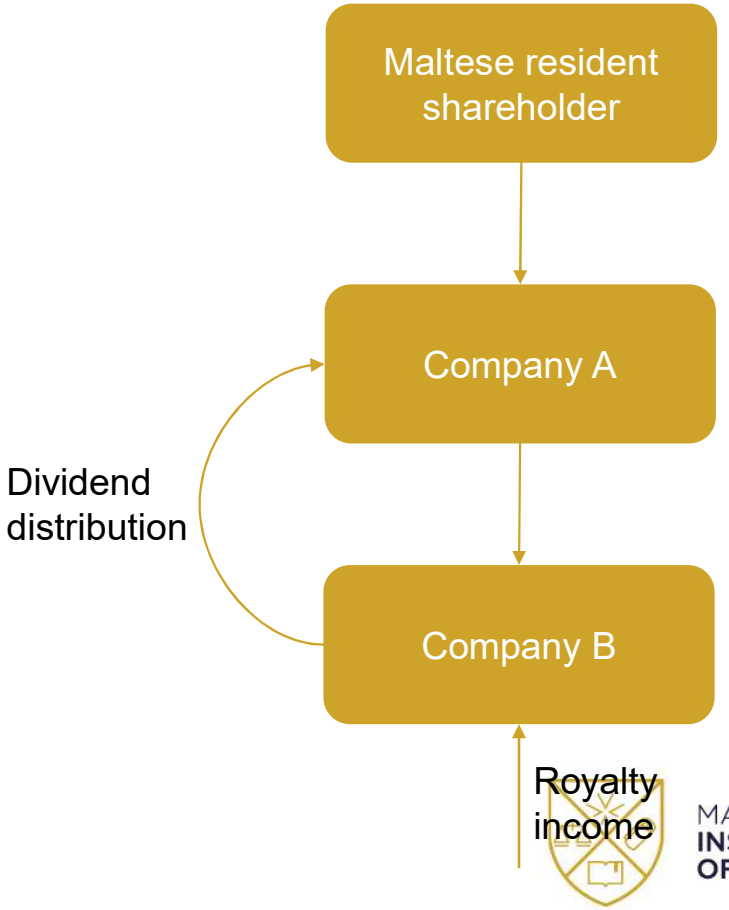
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Case studies

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Case Study A

- Company A and Company B are Maltese resident and domiciled companies;
- Company B is fully owned by Company A, and, in turn, Company A is fully owned by a Maltese resident shareholder;
- Company B is an IP holding company generating passive royalty income;
- Company A is a holding company in receipt of dividend income from Company B.



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Case Study A; - Financial data

	Company B	Company A	Consolidated
Income	300,000	-	300,000
Expenses	(125,000)	-	(125,000)
Gross Profit	175,000	-	175,000
Dividend income	-	175,000	-
Profit before tax	175,000	175,000	175,000

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Case Study A; - Tax computation

	Company B	Company A	Fiscal Unit
Profit before tax	175,000	175,000	175,000
Tax Adjustments			
Non-taxable income	-	-	-
Chargeable income	175,000	175,000	175,000
Income tax charge	(61,250)	(61,250)	(61,250)
Chargeable income after tax	113,750	113,750	113,750

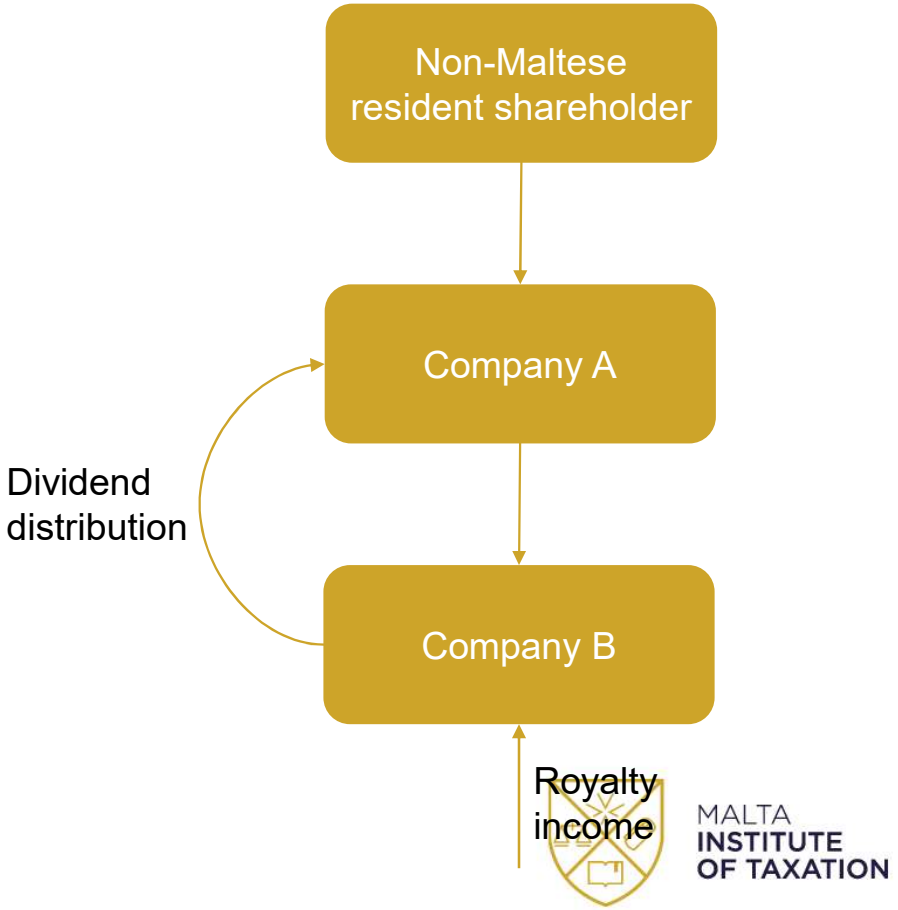
$$35\%\ (base\ rate\ of\ income\ tax) - \frac{0\ (income\ tax\ refund)}{175{,}000\ (chargeable\ income)} = 35\%\ (effective\ rate\ of\ tax)$$

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Case Study B

- Company A and Company B are Maltese resident and domiciled companies;
- Company B is fully owned by Company A, and, in turn, Company A is fully owned by a non-Maltese resident shareholder (duly registered for refund purposes)
- Company B is an IP holding company, generating passive royalty income;
- Company A is a holding in receipt of dividend income from Company B.



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Case Study B; - Financial data

	Company B	Company A	Consolidated
Income	300,000	-	300,000
Expenses	(125,000)	-	(125,000)
Gross Profit	175,000	-	175,000
Dividend income	-	175,000	-
Income tax refund	-	43,750	-
Profit before tax	175,000	218,750	175,000

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Case Study B; - Tax computation

	Company B	Company A	Fiscal Unit
Profit before tax	175,000	218,750	175,000
Tax Adjustments			
Non-taxable income	-	(43,750)	-
Chargeable income	175,000	175,000	175,000
Income tax charge	(61,250)	(61,250)	(17,500)
Chargeable income after tax	113,750	113,750	157,500

$$35\%\ (base\ rate\ of\ income\ tax) - \frac{43{,}750\ (income\ tax\ refund)}{175{,}000\ (chargeable\ income)} = 10\%\ (effective\ rate\ of\ tax)$$

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Case Study B; - Tax computation (cont.)

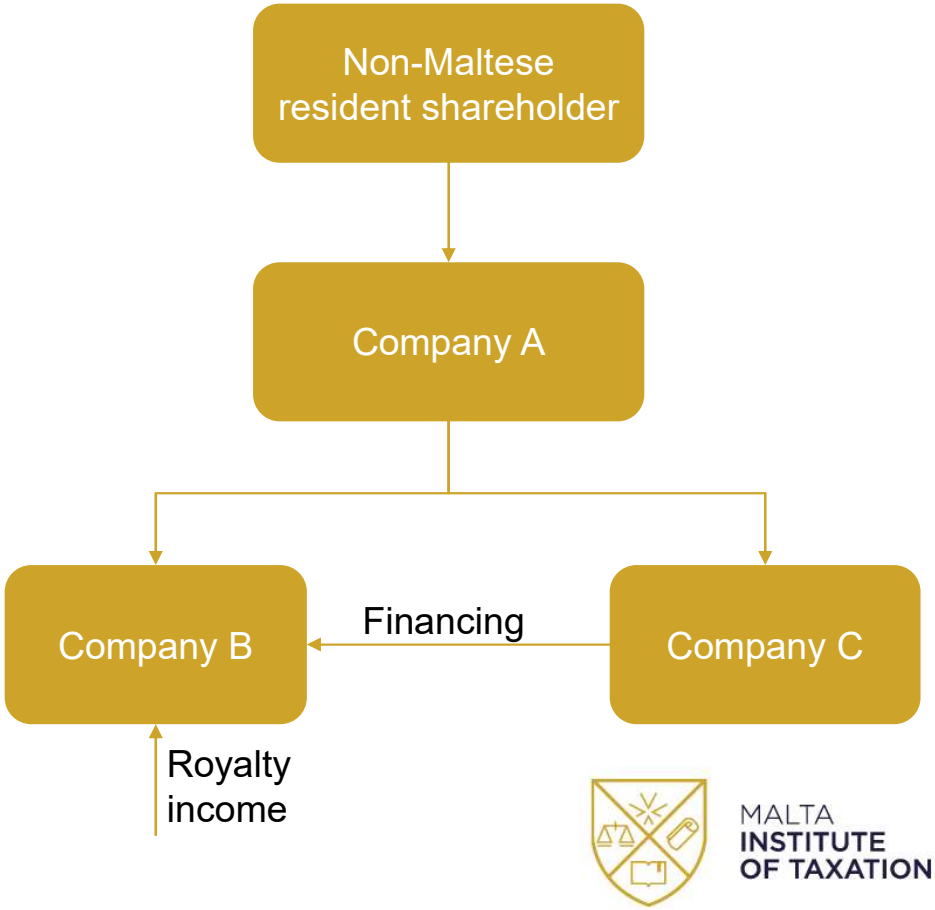
	Company A	Fiscal Unit
Chargeable income	175,000	175,000
Income tax charge	(61,250)	(17,500)
Chargeable income after tax	113,750	157,500
Income tax charge	61,250	17,500
Income tax refund	(43,750)	-
Effective tax charge	17,500	17,500

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Case Study C

- Company A fully owns Company B and Company C. All three companies are Maltese resident and domiciled;
- Company A is fully owned by a non-Maltese resident shareholder (duly registered for refund purposes);
- Company B is an IP holding company generating passive royalty income;
- Company C is a financing company, which has provided a loan to Company B in order to finance the acquisition of the IP.



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Case Study C; - Financial data

	Company B	Company C	Company A	Consolidated
Income	300,000	50,000	-	300,000
Expenses (inc. finance costs)	(125,000)	(20,000)	-	(95,000)
Gross Profit	175,000	30,000	-	205,000
Dividend income	-	-	205,000	-
Income tax refund	-	-	52,750	-
Profit before tax	175,000	30,000	257,750	205,000

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Case Study C; - Tax computation

	Company B	Company C	Company A	Fiscal Unit
Profit before tax	175,000	30,000	257,750	205,000
Tax Adjustments				
Non-taxable income	-	-	(52,750)	-
Chargeable income	175,000	30,000	205,000	205,000
Income tax charge	(61,250)	(10,500)	(71,750)	(19,000)
Chargeable income after tax	113,750	19,500	133,250	186,000

$$35\%\ (base\ rate\ of\ income\ tax) - \frac{43{,}750 + 9{,}000\ (income\ tax\ refund)}{205{,}000\ (chargeable\ income)} = 9.27\%\ (effective\ rate\ of\ tax)$$

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Case Study C; - Tax computation (cont.)

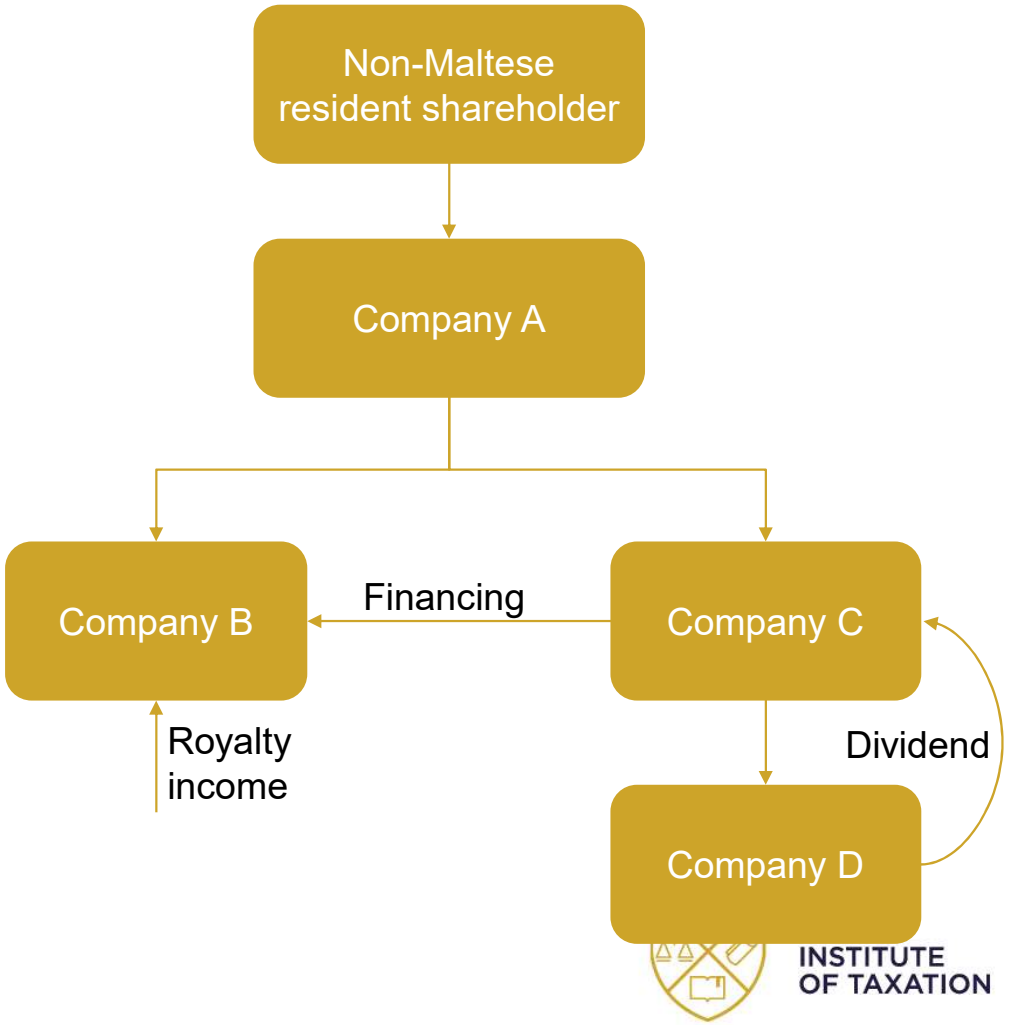
	Company A	Fiscal Unit
Chargeable income	205,000	205,000
Income tax charge	(71,750)	(19,000)
Chargeable income after tax	133,250	186,000
Income tax charge	71,750	19,000
Income tax refund	(52,750)	-
Effective tax charge	19,000	19,000

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Case Study D

- Company A fully owns Company B and Company C. All three companies are Maltese resident and domiciled;
- Company A is fully owned by a non-Maltese resident shareholder (duly registered for refund purposes);
- Company B is an IP holding company generating passive royalty income;
- Company C is a financing company, which has provided a loan to Company B in order to finance the acquisition of the IP;
- Company C fully owns Company D, a company incorporated in another EU territory, and generates dividend income from the said holding. Company D does not form part of the fiscal unit.



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Case Study D; - Financial data

	Company B	Company C	Company A	Consolidated
Income	300,000	50,000	-	300,000
Expenses (inc. finance costs)	(125,000)	(20,000)	-	(95,000)
Gross Profit	175,000	30,000	-	205,000
Dividend income	-	10,000	215,000	10,000
Income tax refund	-	-	52,750	-
Profit before tax	175,000	40,000	267,750	215,000

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Case Study D; - Tax computation

	Company B	Company C	Company A	Fiscal Unit
Profit before tax	175,000	40,000	267,750	215,000
Tax Adjustments				
Dividend income	-	-	-	-
Non-taxable income	-	(10,000)	(62,750)	(10,000)
Chargeable income	175,000	30,000	205,000	205,000
Income tax charge	(61,250)	(10,500)	(71,750)	(19,000)
Chargeable income after tax	113,750	29,500	133,250	186,000

$$35\%\ (base\ rate\ of\ income\ tax) - \frac{43{,}750 + 9{,}000\ (income\ tax\ refund)}{205{,}000\ (chargeable\ income)} = 9.27\%\ (effective\ rate\ of\ tax)$$

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Case Study D; - Tax computation (cont.)

	Company A	Fiscal Unit
Chargeable income	205,000	205,000
Income tax charge	(71,750)	(19,000)
Chargeable income after tax	133,250	186,000
Income tax charge	71,750	19,000
Income tax refund	(52,750)	-
Effective tax charge	19,000	19,000

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Anti-Abuse Measures

Key considerations

- Where the tax payable by the principal taxpayer (i.e. the fiscal unit) for any year of assessment, is lower than 95% of the aggregate of the tax that would have been payable by all companies forming part of the fiscal unit on their chargeable income, the election under these Rules shall be deemed to have caused an advance to the shareholder/s of the principal taxpayer;
- This advance is equal to the difference between the tax payable by all fiscal unit companies and the tax payable by the principal taxpayer grossed up by 35%;
- The advance is deemed a dividend under article 46 of the ITA;
- Furthermore such dividend is deemed to be an untaxed dividend distributed on the tax return date;
- In view of this, the provisions of articles 62 to 65 of the ITA shall apply and if withholding tax is triggered, such dividend would be taxed at 35% (rather than 15%).

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Other matters

Tax considerations

Double Taxation Relief

Any foreign tax suffered by a company forming part of the fiscal unit shall be deemed to have been incurred by the principal taxpayer.

Investment Income Provisions

The investment income provisions shall not apply to payments of investment income where the recipient and the payor form part of the same fiscal unit.

Payment of tax

The principal taxpayer and the qualifying subsidiaries shall be jointly and severally liable for the payment of tax. The tax due by the fiscal unit may be apportioned.

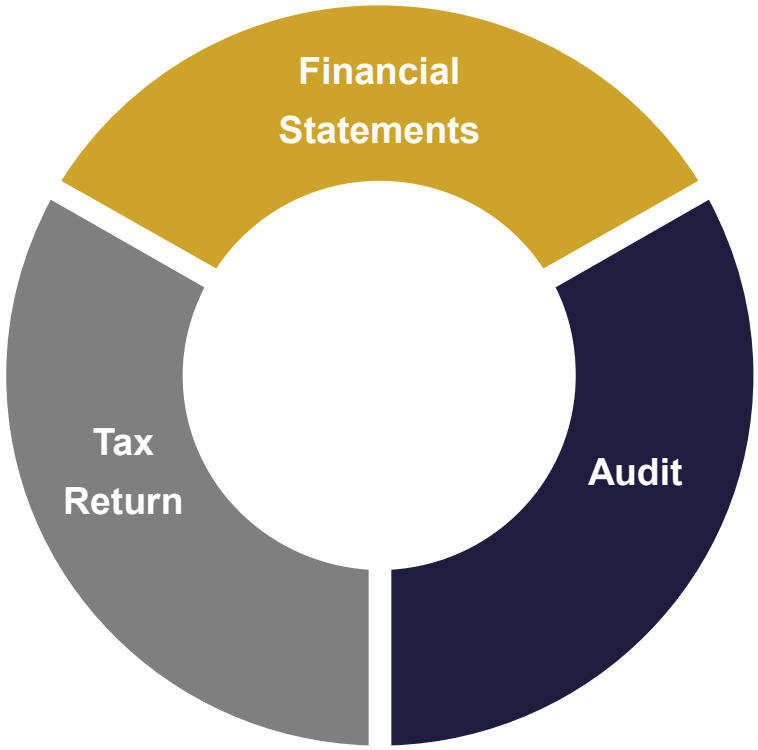


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Other matters

Compliance obligations



The fiscal unit is required to prepare consolidated financial statements on an annual basis covering exclusively those entities within the group.

Such accounts must be audited in the normal manner.

The principal taxpayer will have to file an income tax return declaring all income of the fiscal unit.

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