

## **Malta: Jurisdiction to Tax**

### **Residence and Source basis of Taxation**

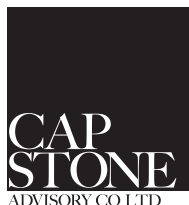
In addition to a 'residence' and 'source' jurisdiction to tax, Malta, also adopts the concept of 'domicile' as a connecting factor. This particular facet is common in other jurisdictions whose fiscal framework is derived or significantly influenced by British legislation. An individual is domiciled wherever he has his permanent home which is defined under common law as where an individual has his 'residence in a particular country with the intention of residing permanently in that country'

The rules regarding the taxability of companies and individuals are similar, what differs, are the concepts with which an individual and a company are considered to be resident and/or domiciled in Malta.

### **Taxation of Companies**

Companies which are resident and domiciled in Malta are taxable on their worldwide income. On the other hand, companies which are either domiciled but not resident or resident but not domiciled are taxable on their Malta source income and capital gains and on any foreign sourced income which is received in Malta. Foreign sourced capital gains are not taxable in Malta even if such gains are received in Malta.

For Maltese income tax purposes a company is resident in Malta if it is incorporated in Malta or if the control and management of the business is exercised in Malta. Although 'domicile' is not defined in domestic legislation it is understood to be the country of



incorporation. Therefore, when one looks solely at Maltese domestic legislation, a company which is incorporated in Malta is considered to be resident and domiciled in Malta, while a company which is incorporated outside Malta but has its control and management in Malta will be considered as resident but not domiciled in Malta.

The situation differs slightly when one looks at international law and at Malta's Double Tax Treaties which are based on the OECD Model Tax Convention. In accordance with the Model Convention, a company which is a resident of two Contracting States under the domestic laws of such states, will be considered to be resident in the state in which its place of effective management is situated. Therefore, although domestic legislation considers all companies that are incorporated in Malta to be resident in Malta, one would need to look at the place of effective management of such an entity to ensure that, in accordance with the prevailing Double Tax Treaty, the company will not be considered to be resident in another Contracting State.

Also, in accordance with the OECD Convention and domestic legislation, companies which are incorporated outside Malta and have their place of effective management in Malta will be considered resident in Malta and taxable as per above, that is, on any Malta source income and capital gains and on foreign source income received in Malta. Foreign source income which is not received in Malta and any foreign sourced Capital Gains (whether received in Malta or not) are not taxable in Malta.

### **Taxation of individuals**

The taxation of individuals is based on similar criteria as to the taxation of companies, that is, individuals who are ordinarily resident and domiciled in Malta are taxable on their worldwide income. On the other hand, individuals who are either domiciled but not ordinarily resident in Malta or ordinarily resident but not domiciled are taxable on Malta sourced income and capital gains and on any foreign source income which is received in Malta. Foreign sourced capital gains are not taxable in Malta (even if received in Malta) for such individuals.

Maltese legislation does not provide a definition of 'ordinarily resident' but only of the term 'resident', therefore one would need to look at case law to be able to understand what the law is referring to. The term is understood to refer to the residence of an individual in the ordinary course of one's life.

In terms of Malta's Double Tax Treaties, when an individual is considered to be a resident of both Contracting States in terms of Maltese legislation and the legislation of the other jurisdiction which is party to the treaty, one would need to look at the tie breaker rules in Article 4 of the relevant Treaty.



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