



MALTA

A Legitimate, Tax Competitive EU Jurisdiction



IFLR 1000



Intellectual
Property
Owners
Association



 FinanceMalta

For general informational purposes only.
For specific advice, please contact us directly – we will be happy to assist.

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Malta Overview



The only EU country with a full imputation system

Effective corporate tax rate of 0 - 5%

0% shareholder dividend tax

White listed - OECD & EU compliant

NO

- Outbound withholding tax on dividends, interest or royalties
- (inbound withholding may be reduced via treaty network)
- Capital Gains
- Duty on international share transfers
- Transfer Pricing Rules
- Thin Capitalisation rules
- Controlled foreign companies laws



- Wealth taxes
- Exit taxes
- Liquidation taxes

Advance tax rulings – guaranteeing tax position for 5 years

100% participation exemption

Tax losses can be carried forward indefinitely

Over 60 double tax treaties



Corporate Tax Refund System



Refund calculated on tax suffered gross of 4 types of relief

	6/7ths	5/7ths	2/3rds
OR	100% tax refund	-	Participation Exemption

- Shareholders receiving dividends paid out of profits taxed in Malta can be entitled to full or partial refund of tax paid by distributing company
- Size of refund dependant upon nature of profits & if double taxation relief claimed*
- Dividends need not be paid – alternatives: bonus shares and / or credited to shareholders
- Tax refunds not subject to Maltese tax
- 14 day legally guaranteed tax refund

*Can be planned for - a company's income is allocated to 5 tax accounts depending on nature of income.
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Principals of Malta Corporate Taxation



Principals of Malta Corporate Taxation



- Malta incorporated companies - taxed on worldwide profits
- Non Malta companies that are resident in Malta ('management & control') and have registered with Malta authorities - taxed on remittance basis~
- Dividends paid out of profits may be entitled to full or partial refund

~ Income arising in Malta and foreign source income received in Malta

* Where there is no tax treaty, Malta gives equivalent relief unilaterally

^ If no documentation is available to establish treaty or unilateral relief, Malta gives a 25% tax credit anyway



4 Types of Relief

1. Double tax treaties
2. Unilateral*
3. Flat- Rate Foreign Credit ^
4. Commonwealth Relief ~

~ Income arising in Malta and foreign source income received in Malta

* Where there is no tax treaty, Malta gives equivalent relief unilaterally

^ If no documentation is available to establish treaty or unilateral relief, Malta gives a 25% tax credit anyway



6/7th Tax Refund Example

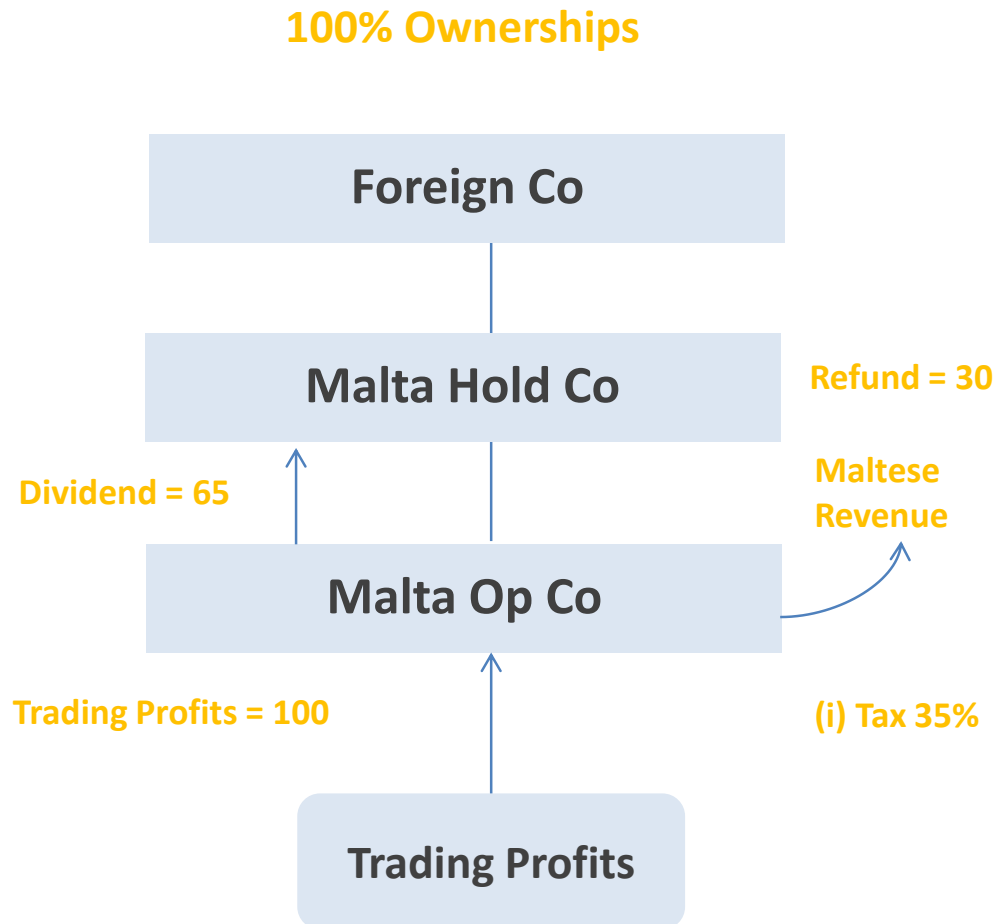
Company Tax	Without Foreign Tax	With Foreign Tax
Net foreign income	800	800
Grossing up with foreign tax	-	42
Chargeable income	800	842
Tax at 35%	280	280
Credit – double tax relief (DTA)		(42)
Malta tax payable	280	253
Shareholder Tax Computation		
Refund on distribution (6/7) of gross tax	240	253
Effective tax leakage	40	0
Effective rate of corporate tax on net income	5%	0%



Corporate Structures Examples REFUND

Effective post refund tax burden of 5%

- MaltaOpCo pays 35% tax
- Dividend of 65 – no further Malta tax
- Malta HoldCo receives 6/7ths refund of Malta tax paid by Malta OpCo on distributed profits
- No additional Malta tax on transfers of profit to ForeignCo
- Tax payment & refund can be planned to occur within 2 – 4 weeks of each other



Remittance Basis of Taxation



Remittance Basis of Taxation

A Malta incorporated company is considered ordinarily resident and domiciled in Malta & Companies which are ordinarily resident and domiciled in Malta are subject to tax on their world-wide income.

- A company which is not incorporated in Malta but is managed and controlled in Malta is taxed on a **remittance basis** on its foreign sourced income.
- Companies taxed on a remittance basis are taxed on:
 - Income and capital gains deemed to arise in Malta
 - Income deemed arise outside Malta and remitted to Malta



What income is NOT subject to tax?

Companies subject to the remittance basis are **not taxed on:**



- Income arising outside of Malta which is not remitted to Malta
- Capital gains arising outside of Malta
- Companies which are **not incorporated in Malta** are considered to be resident in Malta when their **management and control is shifted to Malta**.



Remittance Continued Options

All Foreign Income Remitted to Malta

- Access to Malta tax refund system
- Access to Treaty network
- Use of Participation Exemption
- Does not trigger tax at point of transfer
- Access to EU directives if resident in other EU state

No Foreign Income Remitted to Malta

- No tax levied in Malta
- Income can be remitted elsewhere i.e. offshore bank account
- Significant tax benefits can occur

Part Foreign Income Remitted to Malta

- Malta tax levied on portion remitted to Malta
- Access to Malta refund system, treaty network on Malta remitted income

Note: that whilst most treaties that Malta has entered into agree that residence is dependent upon the place where effective control and management is exercised, a few treaties have specifically limited benefits arising under Malta's remittance system



What is Effective Management & Control

Place where key management & commercial decisions are made

Evidence of following can be used to prove:

- Directors are resident in Malta
- Head office is located in Malta
- Minutes of the board meeting show that most important decisions were taken in Malta
- Management decisions were taken in Malta
- Company operates a Maltese bank account
- Financial Statements are audited by a Maltese auditor
- Operating an office / having employees in Malta

Acumum can assist and provide you with the above services

Note: none of the above factors are conclusive proof



Corporate Formalities



- Low minimum capital requirements, incorporation & authorised capital fees (€1,200 with 20% paid up - €240)
- No local shareholder or director requirements
- Share capital, accounting & tax can be in foreign currency
- 'Flighting' of companies in & out
- Trustees can be registered shareholders
- Malta Stock Exchange; low minimum capital requirements to be listed (€47,00 with 25% paid up – €11750)



Participation Exemption 0% Tax



Participation Exemption 0% Tax



Ability not to declare income or gains obtained from a participating holding

Applies to income & gains of company from material foreign shareholding

Company be:

- resident or incorporated in EU
- not receive 50% or more of income from passive interest or royalties
- subject to foreign tax of 15% or more

Or satisfy that the:

- holding in foreign company not be a portfolio investment
- foreign company or its passive interest or royalties are subject to foreign tax of 5% or more



Malta Participation Exemption Example

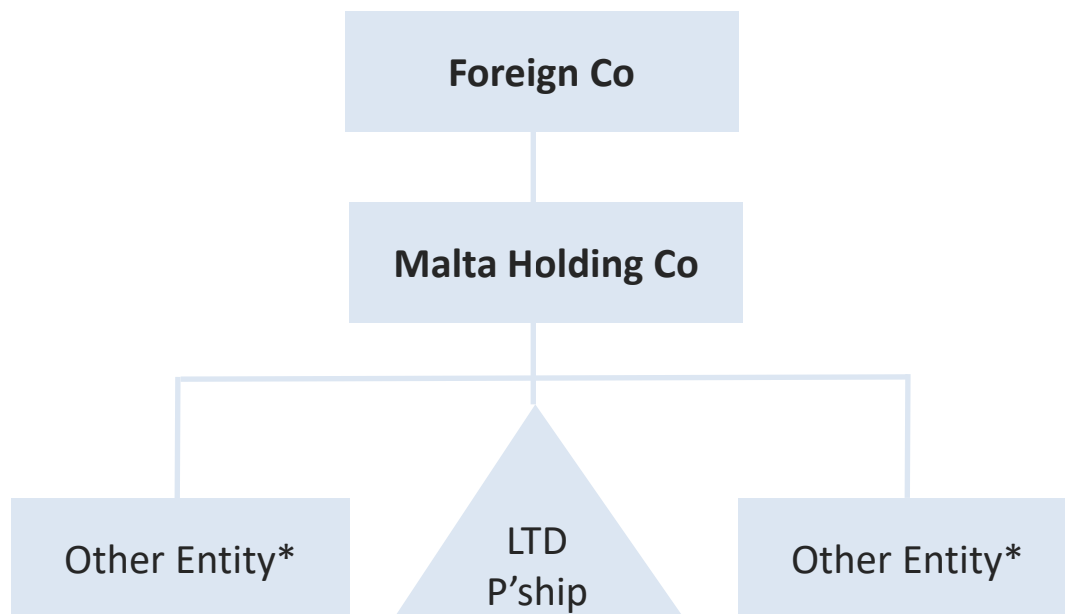


Interest in company or limited partnership must consist of 'equity shares'

'Equity shares' = shares or partnership interest that entitle holder to 2 of (i) votes, (ii) dividends, or (iii) assets on winding up.

Equity shareholding must meet any one of:

- (a) Be at least 10% of equity shares
Minimum value on acquisition of €1.164m & be held for at least 183 days;
or
- (b) Right to appoint director of board; or
- (c) Right of first – refusal on all other equity shares.



Malta Participation Exemption *continued*

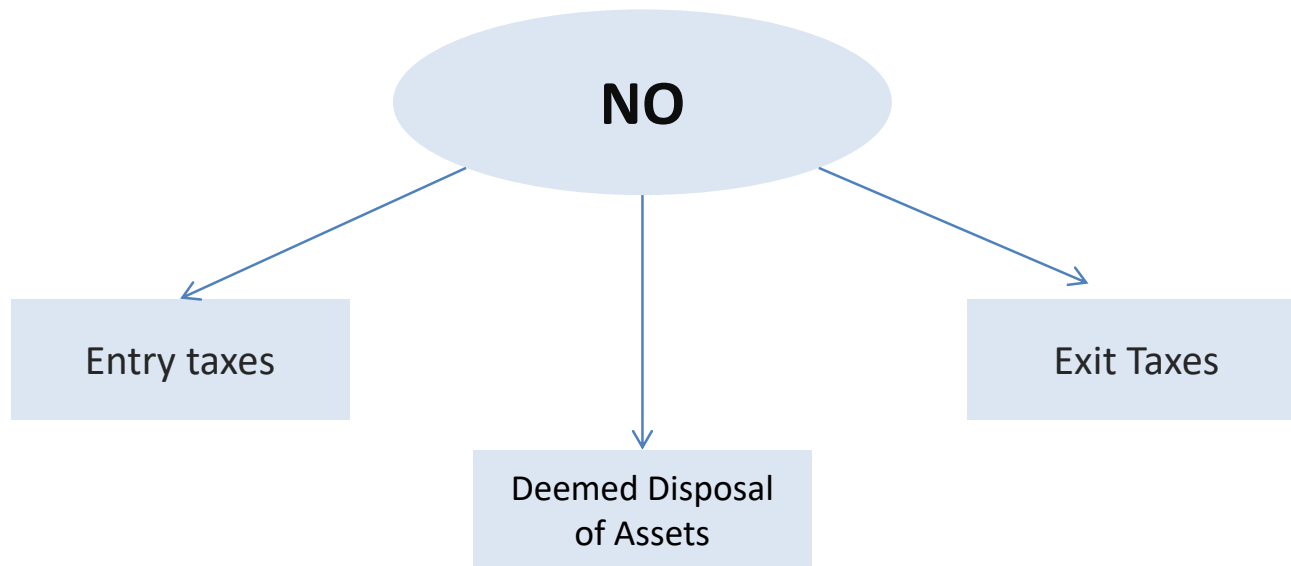


- PE applies to all dividends & gains from transfer of 'equity shares'
- For dividends - basic anti-avoidance provisions
- No anti-avoidance provisions for (i) Malta companies or (ii) non- Malta companies that are subject to 15% tax rate.
- EU Parent – Subsidiary Directive & 60 DTAs
- No withholding tax on dividends distributed by Malta HoldCo



RE Domiciliation

- Both Malta in & out bound re- domiciliation
- SE corporate structure conversions; transfer registered office & / or effect cross – border mergers into a surviving Malta Co
- Can elect to ‘step up’ tax base of foreign assets to market value on movement of company residence / re-domiciles / cross border merger into a Malta Co



Malta Resident | Non-Domiciled Companies Example

Foreign Shareholder

Foreign incorporated –
Malta resident Co

Entry taxes

- ForeignCo managed & controlled (resident) in Malta not taxable on foreign source income* unless received in Malta
- No tax on foreign source capital gains – even if remitted to Malta
- Can achieve 0% tax on foreign income #
- Applicable to trust income
- Requires foreign company to be incorporated in country where tax is not charged on companies not controlled or managed there

**Non taxable income includes income from leasing and operation of aircraft in international traffic*

If not received in Malta



Capital of Malta, Valletta – A UNESCO world heritage site



Malta Trusts & Foundations (MT)



Malta tax law utilises look through - transparent - provisions

Possible to achieve **0% taxation** in Malta or elect to be treated as corporation & benefit from 6/7 tax refund system

Example:

Income attributable to MT =
income arising outside of Malta and/or
income referred to in art12(1)(c) ITA* from Malta companies
AND all beneficiaries non –Malta residents

*Income arising from interest, royalties, taxed dividends

~ Subject to certain conditions i.e. that the trustee is resident in Malta



Then:

Income earned by MT not attributable to MT but is deemed as derived directly by beneficiaries outside of Malta – transparency principal.~

Therefore, if no connecting factors in respect of source of income and residency of beneficiaries = no tax leakage in Malta

Also possible for MT to elect corporate tax treatment

*Income arising from interest, royalties, taxed dividends

~ Subject to certain conditions i.e. that the trustee is resident in Malta



Key aspects of Malta Trust Law

- Based on UK – Jersey – legislation
- For private individual use or as a commercial application
- Allows the holding of **any property** for **any person** irrespective of nationality or residence
- The **laws of any jurisdiction** other than Malta may govern the trust
- Foundations – low minimum capital requirements of €165
- Trustees are highly regulated by the Malta Financial Services Authority ('MFSA'), where they must undergo and meet 'fit and proper' investigations – unlike some other jurisdictions



Malta Trusts Commercial Applications

Securitisation of
Assets

Grant of Real or
Personal Security
Interests

Collective Investment
Schemes

Employee Benefit or
Retirement Schemes

Security Offerings

Portfolio
Management

Syndicated Loan
Agreements
Multi Creditor Banking
Facilities

Insurance Policies &
Payment of Proceeds



FUNDS A Brief Overview



Malta Financial Services Authority (MFSA)

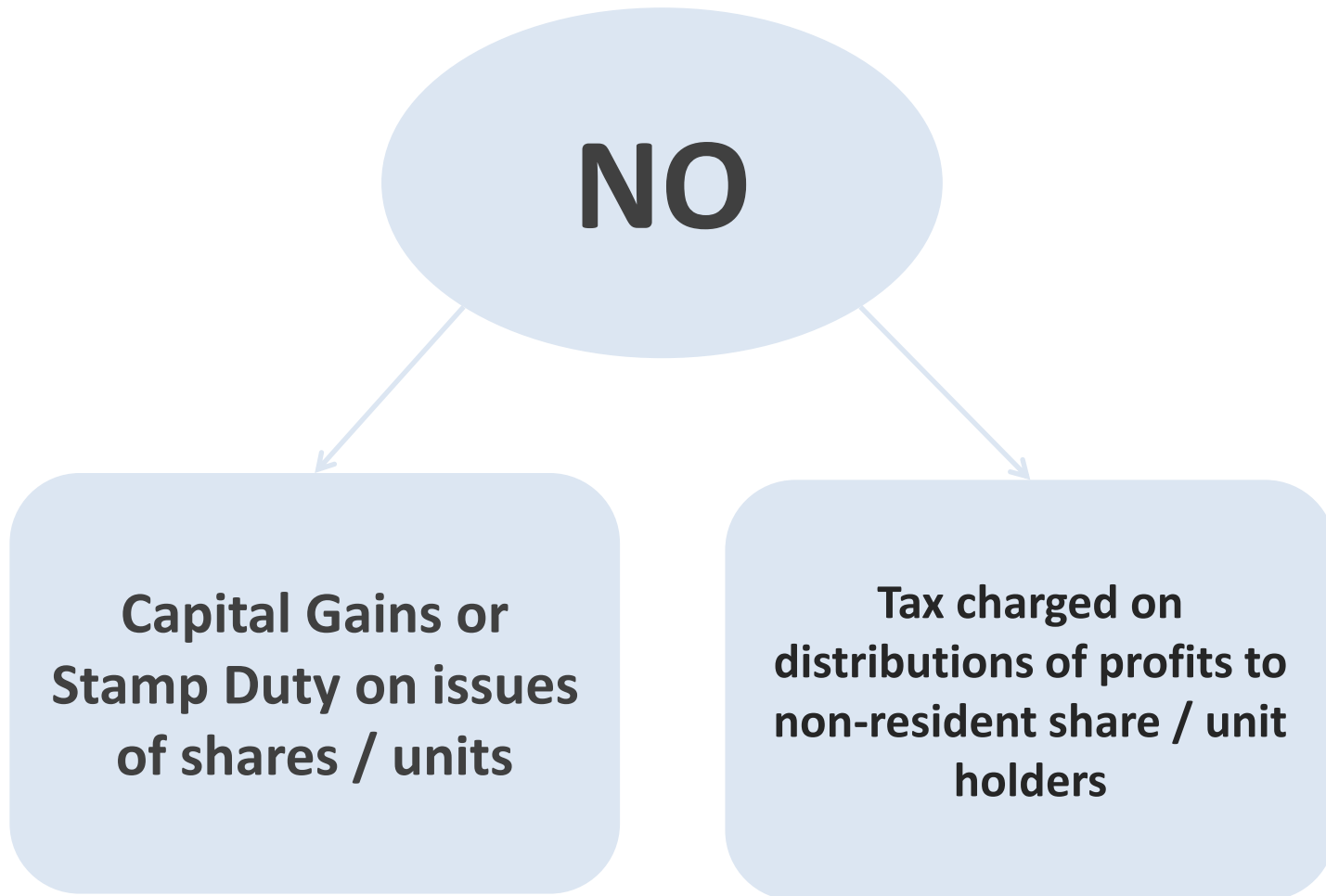
A 'one stop shop' regulator

- May be established as:
 - SICAV – INVCO – Unit Trust
 - Ltd Partnership – Mutual Fund – PIF*
- Funds 0% tax exempt if investing outside of Malta
- Tax exemption on transfers of shares / units
- Gains on share / unit transfers by non-residents normally exempt
- 5% effective tax (net of refunds) for fund managers

For more detailed information regarding the Malta fund regime, please see specific Acumum brochure

* Divided into 3 investor classes with minimum investment thresholds: experienced - €10k / qualifying - €75k / extraordinary - €750k



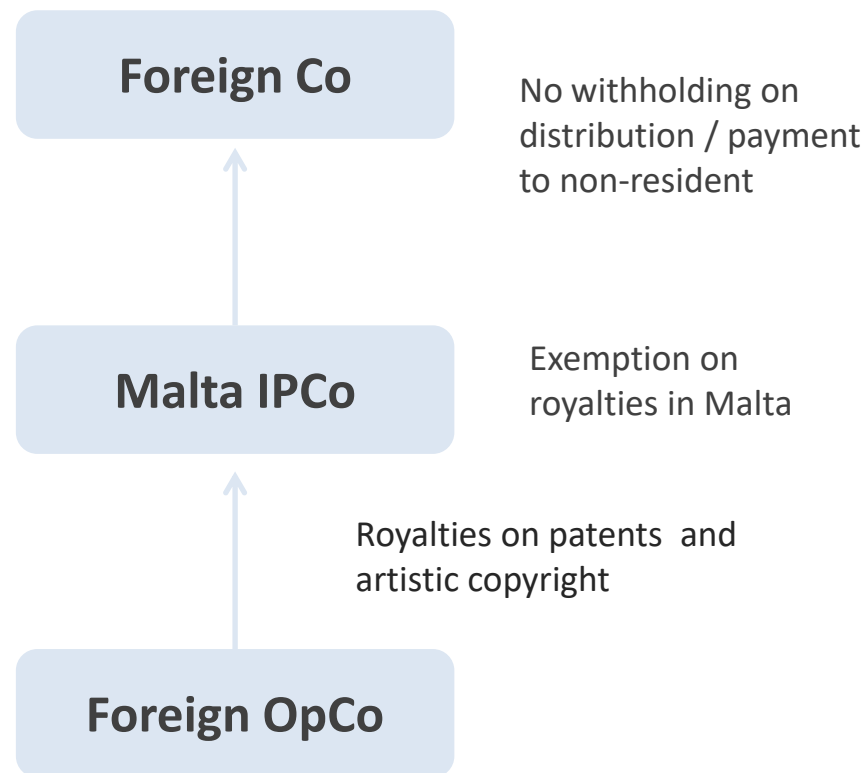


Patent & Artistic Royalty Exemptions 0% Tax

Malta has introduced a complete tax exemption for royalties arising from patents and artistic copyright.

No Malta withholding tax upon payment of dividend, interest or royalties by IPCo to non resident recipient

No withholding in foreign country if OPCo is in EU* or treaty country with applicable royalty article

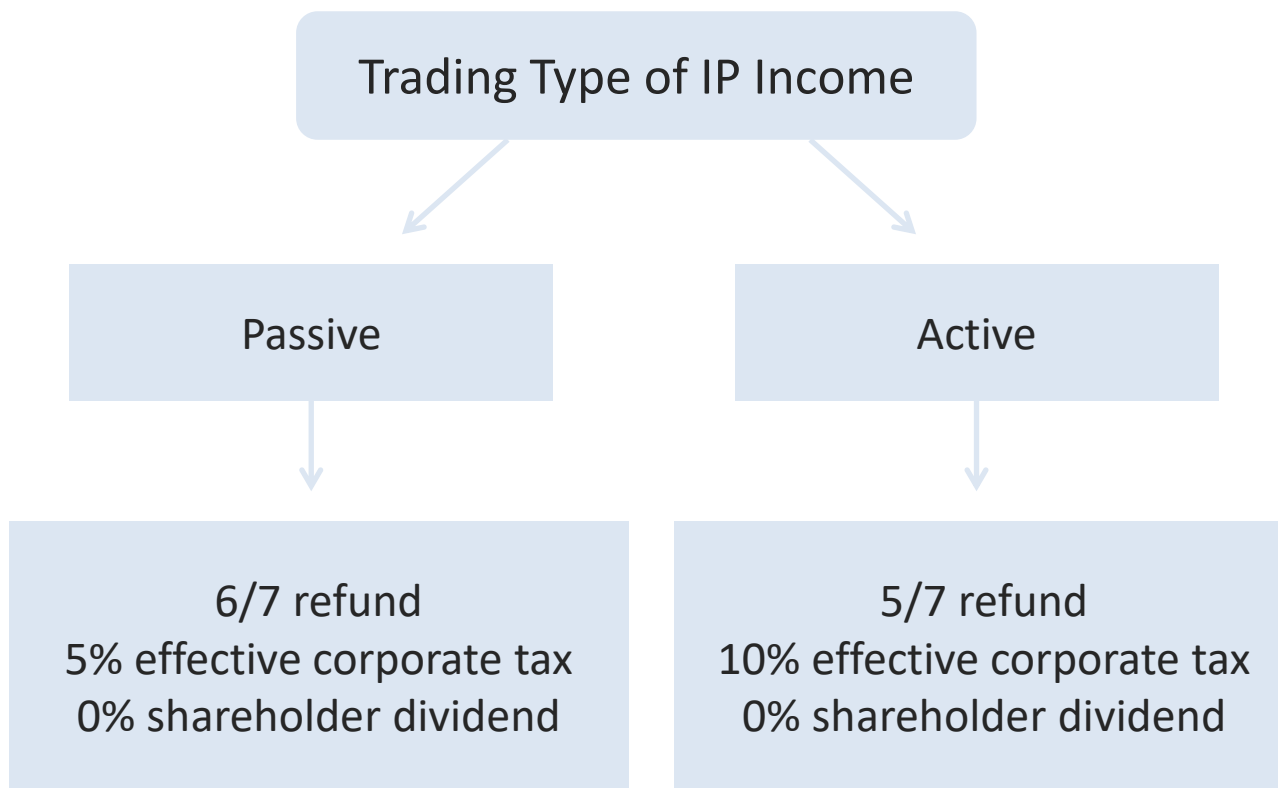


* Interest & Royalties Directive (I +R). The I+R Directive is designed to eliminate withholding tax obstacles in the area of cross-border interest and royalty payments within a group of companies by abolishing: (i) withholding taxes on **royalty payments** arising in a Member State, and (ii) withholding taxes on interest payments arising in a Member State - such interest and royalty payments shall be exempt from any taxes in that State provided that the beneficial owner of the payment is a company or permanent establishment in another Member State.



Non – Exempt IP | Malta Tax Refund

Non exempt intellectual property (i.e. trademarks, domains, software) fall under Malta tax refund system:



Malta: modern – business focused



Aircraft & Maritime



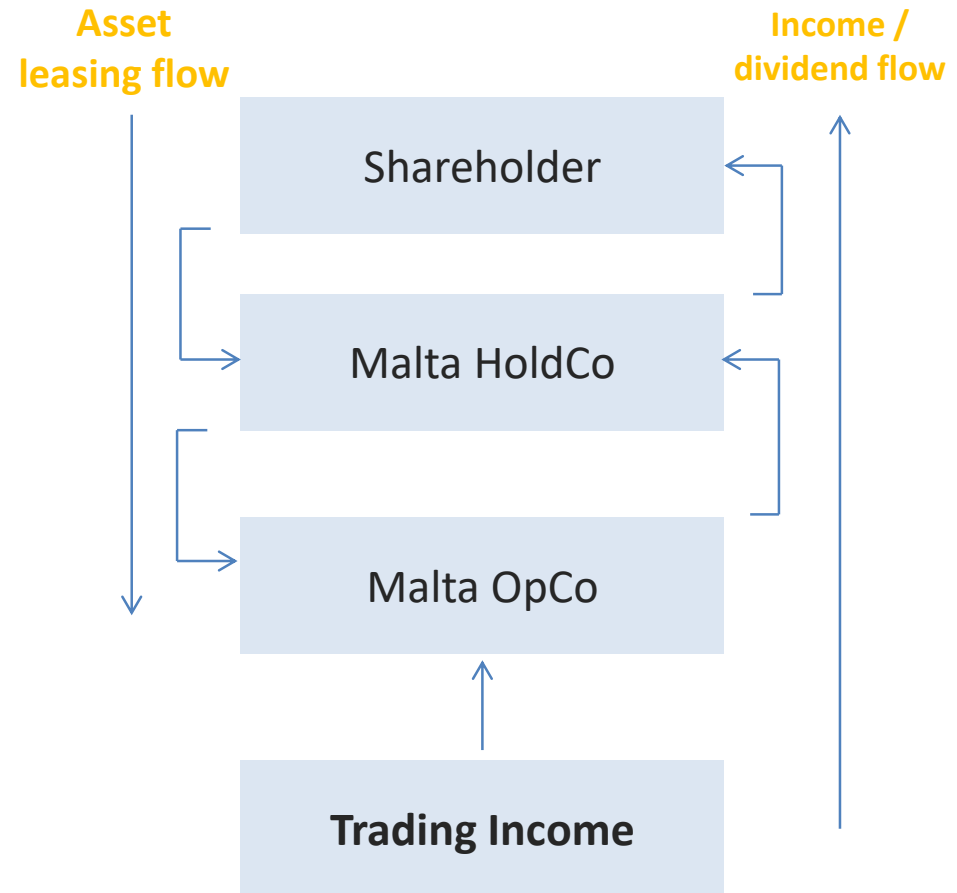
Aircraft / Aircraft Engines

- 0% tax exemption – income from owning leasing or operating aircraft
- 0% VAT exemption where used for international transport of goods or passengers

Shipping activities

Malta Flag – 2012 – exceeds Greece in number of vessels being registered

- Tax on tonnage not income
- VAT of 5.4% on pleasure yachts



Malta tax authorities: 'the larger the yacht – less time spent in EU waters'

Please see additional fact sheets for further information regarding fiscal benefits for the Aviation & Maritime Industries

Maritime Additional Key Benefits



- Exemptions from Malta income tax on income from shipping activities of Malta vessels over 1,000 tons
- Exemptions from duty on documents on the sale or transfer of a Malta vessel of over 1,000 tons
- No nationality restrictions for master, officers and crew
- No trading restrictions on Malta vessels
- Vessels under construction may be registered
- Attractive incentives to owners, registered charterers and financiers of Maltese ships
- No restrictions on the sale or mortgaging of Maltese registered yachts and super yachts



Malta

A Convenient, Strategic Location



Malta Key Facts



Malta Key Facts

- Full EU member – Part of Euro zone - € currency
- Former British colony
- Now Independent Republic
- Civil law system – corporate, commercial & trusts laws based upon English statutes (Jersey)
- English official language
- Inflation rate 4.35%
- GDP €5,271 million
- GDP per capital €13,795



Malta Double Taxation Treaty Network

Signed:

Albania
Australia
Austria
Bahrain
Barbados
Belgium
Bulgaria
Canada
China
Croatia
Cyprus
Czech
Denmark
Egypt
Estonia
Finland
France
Georgia
Germany
Greece

Hong Kong
Hungary
Iceland
India
Ireland
Isle of Man
Italy
Jersey
Jordan
Korea
Kuwait
Latvia
Lebanon
Libya
Lithuania
Luxembourg
Malaysia
Montenegro
Morocco
Netherlands
Norway

Pakistan
Poland
Portugal
Qatar
Romania
San Marino
Serbia
Singapore
Slovakia
Slovenia
South Africa
Spain
Sweden
Switzerland
Syria
Tunisia
UAE
UK
USA



Signed; Not yet ratified

Norway
Guernsey
Israel
Uruguay

Initialled/ In negotiation:

Bosnia and Herzegovina
Ukraine
Oman
Thailand
Turkey
Saudi Arabia



About



About Acumum Services Group

- ❖ Tax
- ❖ Intellectual Property - IP holding companies & royalty routing
- ❖ Corporate Formation & services
- ❖ Private client
- ❖ Trusts & Estate Planning
- ❖ Financial services
- ❖ Maritime
- ❖ International Private & Public Law
- ❖ Industry Support



As your trusted partner, the work that we undertake is always personalised – focused upon achieving our clients' aims, understanding your industry specific requirement, whilst always being cost effective.





Geraldine Noel, Barrister

B.A(Hons)(Oxon), Pg Dip, LLM (Fordham)

Managing Partner; Leading Lawyer

Acumum's services and operations are overseen by its Managing Partner, Geraldine Noel, a UK barrister, registered in Malta.

Memberships

- Bar Council of England & Wales since 2002
- American Bar Association, Associate Member since 2001
- Chamber of Advocates, Malta
- Chartered Institute of Taxation
- International Bar Association
- Society of Trust and Estate Practitioners

Geraldine a native of England, a US permanent resident & CARICOM rights holder, has substantial international experience, having worked in the US, Switzerland and the Cayman Islands over a 20 year career, providing legal, tax and corporate services to multi-national financial, insurance and technology corporations.

Geraldine began her legal career way back in 1990, managing Barristers' Chambers in the UK – multi – million £ law firms; she understands the administrative and organisational requirements of managing multiple clients, attorneys and other service professionals.

It is Geraldine's vision that the Acumum Services Group be a provider of excellence, providing relevant and business focused services to its clients.

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MALTA



Intellectual Property & Royalty Services
0% Patent & Artistic Copyright Tax

Presentation provided for general informational purposes only; to provide a general overview of the pertinent aspects of Malta tax law as it relates to corporate, commercial and trusts arrangements. For specific advice relating to your circumstances, please contact us directly – we will be happy to assist.

06/10/12 v.01



The use of a low or zero tax jurisdiction for the routing or holding of IP is dependent upon two questions:

1. Does the proposed low tax country have an extensive double taxation agreements (DTA) network through which profits emanating from the licensing of the IP can freely flow back to the country of your choice?
2. Are there additional non – income / corporate taxes, such as capital gains, withholding or exit taxes in the low tax jurisdiction?



The case for Malta as a IP jurisdiction of choice Over 60 DTAs and counting

NO

- ☒ Outbound withholding tax on dividends, interest or royalties
(inbound withholding may be reduced via treaty network)
- ☒ Capital Gains
- ☒ Duty on international share transfers
- ☒ Transfer Pricing Rules



IP - Effective Tax Rate

0% Royalties

'Patent Box' & Artistic Copyright

0% tax on non-remitted foreign source royalty income derived by a Malta resident, foreign incorporated company or foreign source royalty income derived by a Malta branch

5% - effective tax rate due to full imputation system

0-5% - Malta's full imputation system combined with claiming foreign tax credits, amortisation/depreciation or other costs i.e. finance expenses

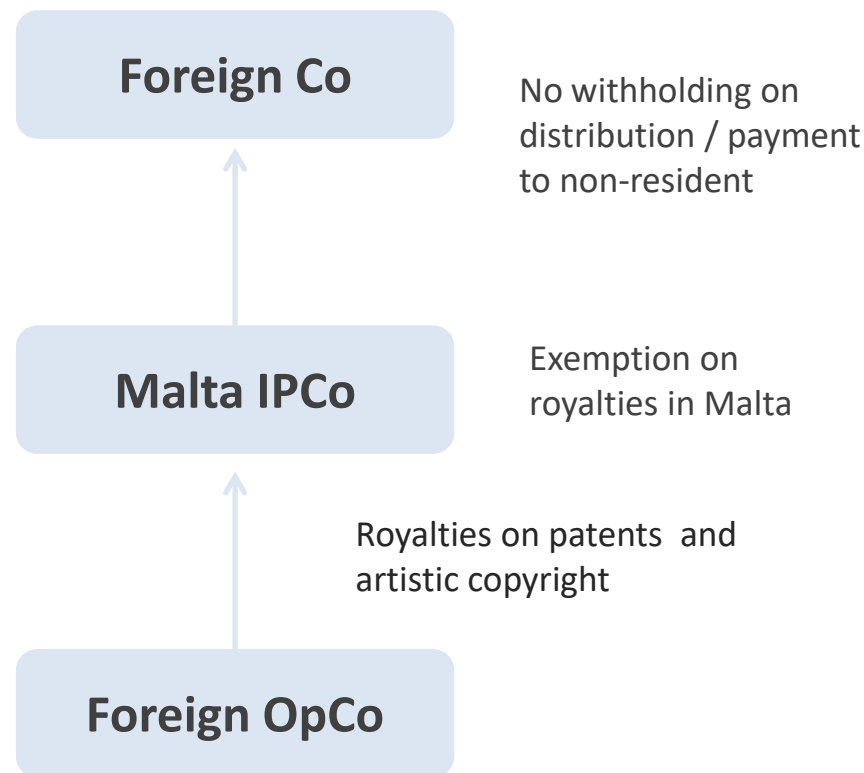


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No withholding in foreign country if OPCo is in EU* or treaty country with applicable royalty article



* Interest & Royalties Directive (I + R). The I+R Directive is designed to eliminate withholding tax obstacles in the area of cross-border interest and royalty payments within a group of companies by abolishing: (i) withholding taxes on **royalty payments** arising in a Member State, and (ii) withholding taxes on interest payments arising in a Member State - such interest and royalty payments shall be exempt from any taxes in that State provided that the beneficial owner of the payment is a company or permanent establishment in another Member State.



0% Tax Exemption applies to
royalties and similar income arising
from



Patents

As a result of R&D activities performed anywhere in the world, by anyone, which leads to an invention, registered as a patent and if same is capable of being registered in Malta



Artistic Copyright

- Artistic works
- Audiovisual works
- Databases
- Literary works
- Musical works
- Paintings, drawings, etchings, lithographs, woodcuts, engravings and prints
- Works of sculpture
- Photographs not comprised in an audiovisual work
- Maps, plans, diagrams and three-dimensional works relative to geography, science or topography, but excluding semiconductor product topographies
- Photographs not comprised in an audiovisual work
- Works of architecture - buildings or models
- Works of artistic craftsmanship, including pictorial woven tissues and articles of applied handicraft and industrial art.

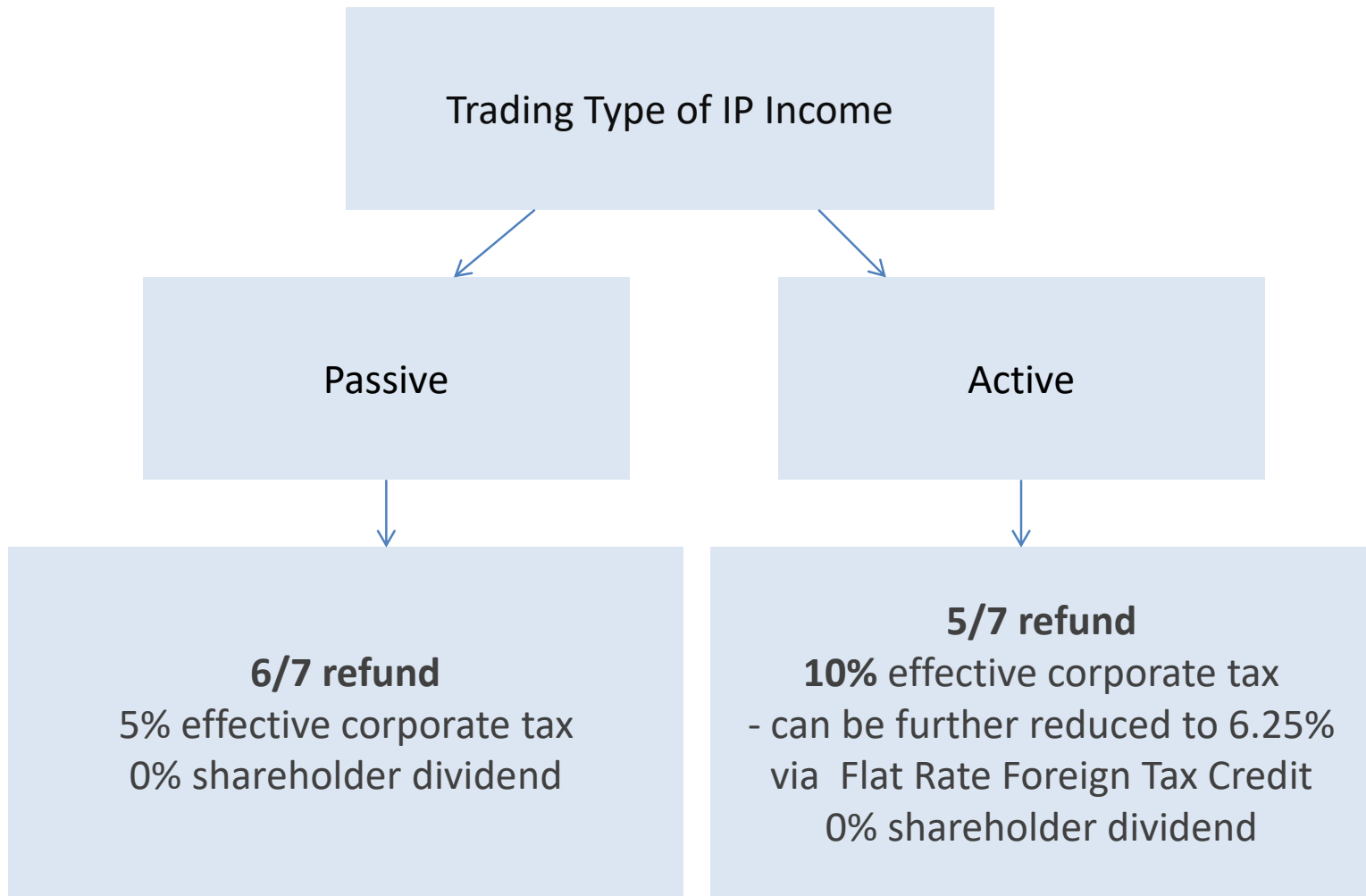




Non-Exempt IP Malta Tax Refund



Non – Exempt IP Malta Tax Refund



Active royalties are royalties that are derived from a trade or business or have suffered at least 5% foreign tax, the income would not be deemed to be passive.

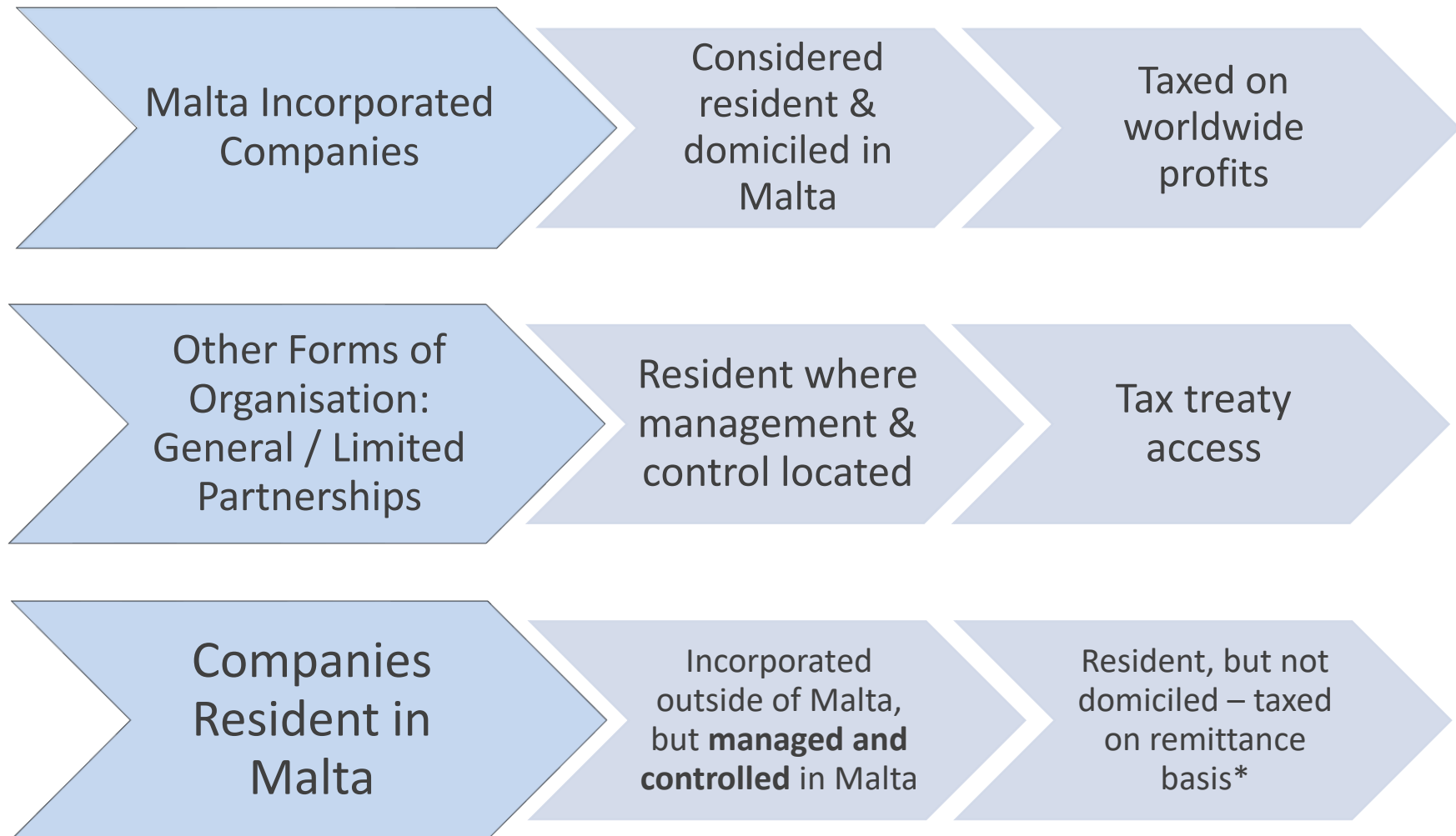


How does Malta Compare?

Malta 0% Any patent from any origin or artistic copyright 0 – 5% non-exempt IP* - Lowest in Europe -		
Switzerland Only one canton - Nidwalden - has specific IP License box rule – the effective corporate income tax rate (including federal tax) is 8.8%		Holland 10% Patents Self developed R&D only 80% exempt for IP & 20% other IP = 5.6% overall tax
Luxemburg 5.76%	Belgium 6.8%	UK Only for patents granted in UK & EU 10%



Malta Tax & Residence



*Taxed only if income is received in Malta. Not considered received in Malta if income is received in a foreign bank account.



No Withholding Taxes

Inbound

Foreign tax on royalties paid to Malta can be eliminated or minimised due to EU law* and Malta's tax treaty network

Outbound

No Malta tax on outbound dividends, interest or royalties



*EU Directive – Parent & Subsidiary



... No Withholding Taxes

- Step up value of IP – from historic cost to fair market value (FMV) - can be amortised in respect of active trade or business
- Capital expenditure for acquisition of IP rights (equivalent to FMV) maybe amortised over 3 years for active trade or business
- Full tax exemption on intra-group IP transferees with no claw-back taxes or levies on subsequent disposals where transferee is non – Malta resident
- No capital gains
- No exit taxes

*EU Directive – Parent & Subsidiary



- No Withholding Taxes on dividends, interest or royalties

Inbound

Foreign tax on royalties paid to Malta can be eliminated or minimised due to EU law* and Malta's tax treaty network

Outbound

No Malta tax on outbound dividends, interest or royalties

- Intra-group licensing allowed – royalty must be at arms length
- Indefinite carry forward of losses



Securitisation Vehicles

Foreign originator transfers assets off balance sheet - present or future / tangible or intangible

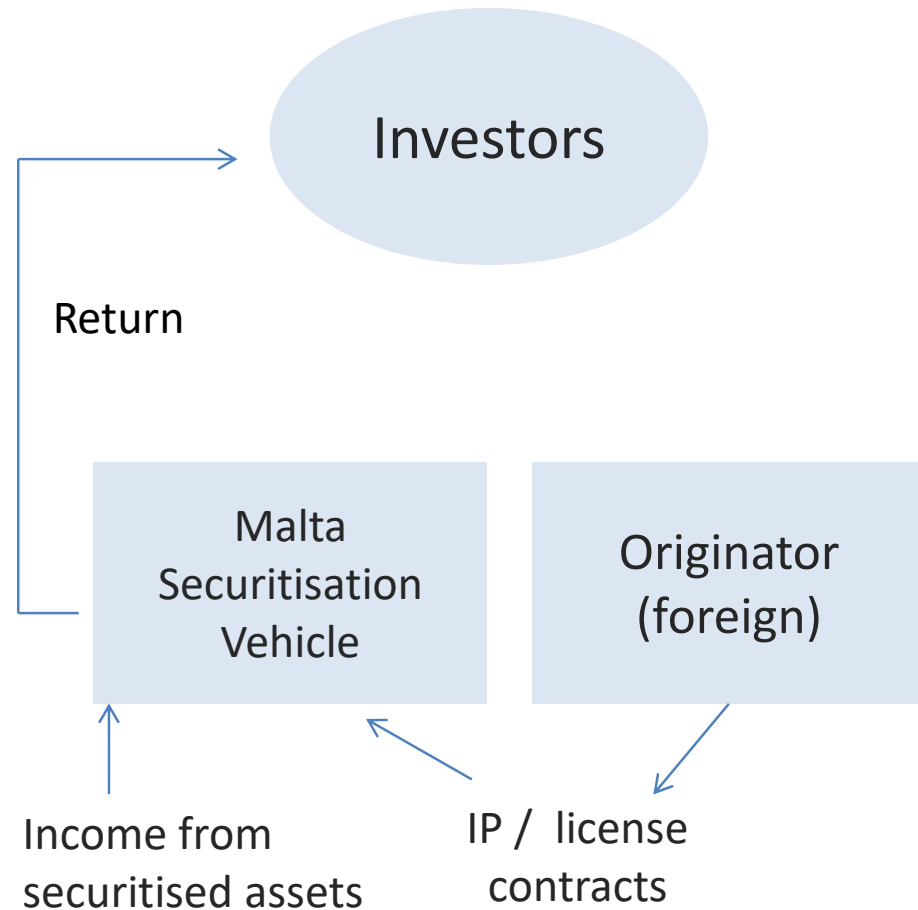
Malta tax deductions allowed for:

- (i) Acquisition price, finance & operating costs
- (ii) Residual deduction*

No taxable income at level of securitisation vehicle

No Malta withholding tax on payments made by securitisation vehicle to non-Malta resident holders of securities or bonds issued by Malta securitisation vehicle.

For private securitisation vehicles only notification to Malta Financial Services Authority (MFSA) necessary



*A future deduction allowed on any remaining income equal to the said remaining income.

Transfer from originator to securitisation vehicle may be by novation, sale, assignment, and declaration on trust.

License from MFSA necessary for public securitisation vehicles.



Acumum's IP & Asset Structuring Services



Acumum can provide the full range of IP services:

IP services

Registration of trademarks and patents in the EU and globally

Corporate & Trust

- Analysis of appropriate tax, licence and debt vehicles tailored to your situation and goals
- Formation of structure: trading and holding companies, special vehicle, trusts
- Administration and maintenance of structure

Accounting & Audit

- Corporate & personal income tax services
- IP & royalty revenue – checking & auditing for licensing rights holders, beneficiaries & revenue participants – investors, funding entities & talent
- Accounting & book keeping services | VAT returns preparation & submission
Audits



Dr. Andreas O'Shea becomes a member of the Acumum Legal Group International barrister & author joins the Acumum team

As of November 5, 2012, Acumum is pleased to announce that international barrister & author, Dr Andreas O'Shea has joined the Acumum Legal Group.

Dr. O'Shea's participation in the Group substantially increases the fields of law that Acumum provides advice and assistance in.

Andreas' practices in the UK, is registered in Malta as a barrister and appears before International Courts and Tribunals. Andreas' legal experience also extends to the EU region, particularly Belgium and France, as well as Africa, including Libya and South Africa. Andreas has advocated in major war crimes trials before the International Criminal Court, the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia and the Special Court for Sierra Leone.

Andreas' practice focuses on the following areas:

- EU law – freedom of movement, employment and residence
- Human rights – refugee law, nationality, residence & fair trial issues
- Bribery & Corruption
- Crime – drug & human trafficking, extradition, money laundering, international terrorism & war crimes
- State and corporate responsibility
- Andreas has taught and published extensively in the field of International Law and is the author of:
 - International Law and Organisation: a Practical Analysis, (1998)
 - Amnesty for Crime in International Law and Practice, (2001)

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The Acumum Legal Group – comprises of: Acumum Legal – a legal, corporate, tax & intellectual property firm, Acumum is centrally located and managed in the tax efficient EU country of Malta & Acumum Services Ltd – providing corporate formation, shipping & related services such as accounting, nominee directorships & virtual / back office add-ons.

Acumum also provides advocacy services through an associated international Barristers Chambers – Vitoria International Chambers, representing law firms and clients – individuals, corporations, institutions & Governments before UK, EU and International Courts & Tribunals; world-wide.

Utilising a multi-disciplinary & multi – jurisdictional approach, we offer our services to private individuals, corporations & Governments in the areas of International Law:

- Tax
- Corporate Formation & Services
- Intellectual Property
- Gaming - Malta, UK, Alderney, Caribbean, USA
- Private Client
- Trusts & Estate Planning
- Maritime
- Financial Services
- International Crime
- Human Rights
- Financial services
- Industry Support



For more information about legal, tax, corporate
or intellectual property services in Malta, please contact us:

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