

# Malta

## Contacts

### Malta

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## 1. Types of tax

### 1.1 Inheritance tax

Maltese law does not include an inheritance tax, but duty on documents and transfers applies to transmissions *causa mortis* of certain assets.

### 1.2 Gift tax

Maltese law does not include gift tax, but donations of certain assets attract income tax on capital gains and duty on documents and transfers. Exemptions with respect to donations to close relatives are expected.

### 1.3 Real estate transfer tax

Transfers of immovable property situated in Malta are subject to property transfer tax. Generally, property transfer tax is charged at 12% of transfer value, but there are cases when the 12% tax is levied by reference to the excess, if any, of the transfer value over its acquisition.

In certain cases, the transferee can elect to opt out of property transfer tax and pay income tax on capital gains on transfers of immovable property done by persons who are resident and domiciled in Malta. Cases when a person may opt out of property transfer tax involve property situated in special designated areas, transfers by nonresidents and transfer of property owned less than 12 years.



## 1.4 Individual income tax

Individuals who are both ordinarily resident and domiciled in Malta are subject to tax on their worldwide income.

Persons who are either ordinarily resident in Malta or domiciled in Malta are subject to tax only on local-source income, local-source chargeable capital gains and foreign-source income received in Malta.

Generally, individuals are considered resident in Malta if they spend more than 183 days in a calendar year in Malta.

Temporary residents, who are in Malta without the intention to establish residence in Malta and who have not actually resided in Malta at one or more times for a period equal to six months in the year preceding the year of assessment, are not taxed on foreign-source income.

## 1.5 Business tax

Companies are subject to tax at the rate of 35%, but when such companies distribute their profits to their shareholders (irrespective of whether such shareholders are residents or nonresidents, individuals or bodies of persons), the shareholders are entitled to receive a refund of a substantial part of the tax paid by the distributing company. Outbound dividend payments are not subject to further tax.

## 1.6 Deed tax

There are no deed taxes in Malta, but fees for enrollment of deeds in the Public Registry and the Land Registry are contemplated.

## 1.7 Stamp duty

### **Immovable property**

Transfer of immovable property is subject to duty on documents and transfers, which is calculated at the rate of 5% of the amount or value of the consideration for the transfer of such thing or of the value of such thing, whichever is higher.

### **Marketable securities**

Duty on documents is due at the rate of 2% on the acquisition of marketable securities. However, if the securities are held in a property company with at least 75% of its total value of assets is held in immovable property, the duty increases by 3%.

Exemptions for companies owning assets outside Malta are considered.



## 1.8 Land appreciation tax

No land appreciation tax is levied in Malta.

## 1.9 Endowment tax

No endowment tax is levied in Malta.

## 1.10 Transfer duty

No transfer duty is levied in Malta.

## 1.11 Net wealth tax

No wealth tax is levied in Malta.

# 2. Who is liable?

The taxation of individuals in Malta is determined by their residence and domicile status.

## 2.1 Residency status

Individuals who are both ordinarily resident and domiciled in Malta are subject to tax on their worldwide income and chargeable capital gains.

In practice, individuals generally are considered resident in Malta if they spend more than 183 days in a calendar year in Malta. Individuals are considered ordinarily resident if Malta is their habitual residence.

## 2.2 Domicile status

Domicile is not only about a physical stay but also about intention (the intention to live permanently in a country). People are deemed to be domiciled in the country where they have their permanent home. It refers to the place they are mostly connected to and determines the way they conduct their lifestyle. In the case where a person has homes in more than one country at one time, for the purposes of determining his or her domicile, a further inquiry may have to be made to decide which, if any, should be regarded as his or her principal home.



There are three types of domicile:

1. **Domicile of origin**

Domicile of origin is acquired at birth and is normally the domicile of the father.

2. **Domicile of choice**

A person of age and who is not incapacitated at law may wish to sever the ties with the domicile of origin because he or she intends to reside permanently in another country. Such individual must not have an intention to return to the domicile of origin. This means that domicile of choice is acquired by the combination of **residence** and the **intention of permanent or indefinite residence**. Therefore, one must consider the **intention** of the individual to establish domicile of choice. If the necessary intention is there, an existing domicile of choice can sometimes be abandoned and another domicile acquired.

3. **Domicile of dependents**

Generally, wives acquire the domicile of their husbands upon marriage. (This has been challenged in UK; however, it had never been challenged in Malta until now.) Children acquire the domicile of their father. When either the child's father is dead or the child is illegitimate, the child acquires the domicile of the mother. Children of unknown parents are domiciled in the country where they are found.

### 3. Exemptions and reliefs

The laws of Malta include a number of exemptions and reliefs, such as the following:

- ▶ The transfer of property between companies forming part of the same group is exempt from tax. The conditions for a company to be considered as part of a group are found in Article 5(9) of the Income Tax Act, which is also applicable with respect to exemption under the new system.
- ▶ A transfer of property is also exempt in the case where a person transfers the property that he or she occupied for at least three consecutive years immediately preceding the date of transfer within 12 months from when he or she vacated the premises.
- ▶ The transfer of immovable property and marketable securities between married couples or couples who were formerly married, consequent to a consensual or judicial separation or to a divorce between such persons, or on the dissolution of the community of acquests existing between them or on any partition of any property held in common between spouses, being community property or otherwise on the death of one spouse between the surviving spouse and the heirs of the deceased spouse, is exempt from tax.
- ▶ Donations to spouses, descendants or ascendants in the direct line, or to the spouse of any such descendant or ascendant or in the absence of any descendants in the direct line, to a brother or sister or to a descendant of the brother or sister or to a philanthropic institution, such donation would be exempt from tax.



#### 4. Filing procedures

The transfer of immovable property in Malta must take place by a public deed published by a notary public. The notary public is obliged by law to register every transfer of an immovable property.

#### 5. Assessments and valuations

See Section 1 for details.

#### 6. Trusts, foundations and private purpose funds

Maltese law provides for trusts and foundations.

#### 7. Grants

There is no death grant in Malta.

#### 8. Life insurance

A duty of 10% is charged on any policy of life insurance, which shall only be chargeable on policies where the policyholder is resident in Malta or in cases where the policyholder is a legal person and where such policyholder is incorporated or otherwise created in Malta.

The income of any retirement fund or retirement scheme that is duly licensed other than income from immovable property situated in Malta is exempt from tax.



## 9. Civil law on succession

### 9.1 Succession

A person can either die testate (with a public will or secret will) or intestate (without a will). The law provides for intestate succession in favor of the descendants, the ascendants, the collateral relatives and the spouse of the deceased, and the Government of Malta, in the order laid down in the Civil Code, Chapter 16 of the Laws of Malta.

The surviving spouse and the descendants of the deceased are automatically entitled to a statutory share of the deceased's estate ("the reserved portion"), even if the provisions of the last will of the deceased do not leave the surviving spouse and/or the descendants as heirs.

The reserved portion due to all children is one-third of the value of the estate if such children are not more than four in number or one-half of such value if they are five or more.

Where a deceased spouse is survived by children or other descendants, the surviving spouse shall be entitled to one-fourth of the value of the estate in full ownership and if there are no children or descendants, the surviving spouse shall be entitled to one-third of the value of the estate in full ownership.

The surviving spouse is also entitled to the right of habitation over the tenement occupied as the principal residence by the surviving spouse at the time of the death of the deceased.

## 10. Estate tax treaties

Malta does not have estate tax treaties, but at the moment Malta has more than 60 double tax treaties.