

The Remittance Basis of Taxation for Individuals under the Income Tax Act

1. Introduction

- 1.1. Depending on the residence and domicile of the individual, liability to Maltese income tax arises -
 - on a worldwide basis, or
 - on a remittance basis, or
 - on a territorial basis
- 1.2. The worldwide basis of taxation applies to the income of persons who are ordinarily resident *and* domiciled in Malta. It also applies to persons who hold the status of long-term resident or are in possession of a permanent residence certificate or a permanent residence card (as defined in the Status of Long-Term Residents (Third Country Nationals) Regulations and the Free Movement of European Union Nationals and their Family Members Order). In the case of a married couple living together, if one of the spouses is ordinarily resident and domiciled in Malta, the worldwide basis of taxation applies to the income and capital gains of both spouses¹.
- 1.3. Under the worldwide basis of taxation, all income and capital gains are subject to Maltese tax regardless of where they arise and where they are received.
- 1.4. The remittance basis applies to persons who are *either* not domiciled *or* not ordinarily resident in Malta. The remittance basis also applies, under certain conditions, to returned migrants.
- 1.5. Under the remittance basis of taxation -
 - all income arising in Malta is subject to tax, regardless of where it is received
 - income arising outside Malta is subject to Maltese tax only if and to the extent that it is received in Malta
 - capital gains arising outside Malta are not subject to tax, even if they are received in Malta
- 1.6. Persons who are not resident in Malta are subject to tax only on income arising in Malta (territorial basis).
- 1.7. Certain exemptions may be available, including the exemptions for non-residents under article 12(1)(c) of the Income Tax Act.
- 1.8. Subject to certain limitations, individuals to whom the remittance basis of taxation applies are subject to the special rule providing for a minimum tax liability as explained in section 6.
- 1.9. The application of the general rules described above depends on the meaning of various basic terms and concepts, including -
 - Residence and ordinary residence
 - Domicile
 - Income arising in Malta
 - Income received in Malta
- 1.10. These guidelines set out the meaning of these terms as applied by the Office of the Commissioner for Revenue to individuals.

2. Residence and ordinary residence

- 2.1. Residence does not depend on nationality or any other civil status, but is a question of fact. A person may be resident in Malta even if he is also resident for tax purposes in another country.

¹ "Spouse" includes a partner in a registered civil union.

- 2.2. Presence in Malta for more than 183 days in any particular year amounts to residence in Malta for that year, regardless of the purpose and the nature of the individual's stay in Malta. An individual who comes to Malta to establish his residence here becomes resident from the date of his arrival, regardless of the duration of his stay in Malta in any particular year.
- 2.3. A person who lives in Malta on a permanent or indefinite basis is ordinarily resident in Malta. A person who is in Malta for a temporary purpose may become ordinarily resident in certain circumstances. This would apply, for example, to individuals who are in Malta for more than 183 days in each year over a long period - say, for three consecutive years. It can also apply to individuals who do not stay in Malta for more than 183 days in any year but who come to Malta regularly over a long period - say, over a period of three years - and establish personal and economic ties with Malta.
- 2.4. An ordinary resident loses his residence status if he leaves Malta permanently or indefinitely. If he is temporarily absent from Malta, he continues to be considered as resident here unless his absence is or becomes inconsistent with a residence status. This depends on the circumstances of each case and, in particular, on the personal and economic ties that the individual may have retained with Malta.

3. Domicile

- 3.1. Individuals who are in Malta and consider Malta as their permanent home are domiciled in Malta. "Home" here refers to the place where a person belongs and implies stronger ties with a country than residence.
- 3.2. Domicile does not depend on nationality.
- 3.3. Every individual acquires domicile at birth (domicile of origin). This is normally the domicile of the parents, regardless of the place where the individual is born.
- 3.4. An individual may change his domicile of origin and acquire a domicile of choice. A domicile of choice in a particular country is acquired when the individual takes up residence in that country with the intention of making that country his permanent home. A person who takes up residence in a country, even if for a long or indefinite period, does not acquire domicile in that country if he has the intention of returning some day to his country of domicile or of settling some day somewhere else.
- 3.5. No individual can be without a domicile and no individual can have more than one domicile at the same time. An individual does not lose his domicile of origin unless and until he acquires a domicile of choice. If an individual acquires a domicile of choice, he can change domicile again by taking up a new domicile of choice or returning to the country of his domicile of origin. If an individual abandons a domicile of choice without establishing his permanent home in any other country, his domicile of origin will revive automatically.

4. Arising in Malta

- 4.1. Income derived from employment or from a profession, business or other self-employment arises in Malta if the activities are performed in Malta.
- 4.2. For double taxation treaty purposes, liability to Maltese tax on income from an employment may depend on the duration of the employee's stay in Malta, and liability to Maltese tax on income from a profession or business may depend on whether those activities are carried on through a fixed place of business in Malta or not. Unless the provisions of a double taxation agreement are applicable, however, the duration of the stay in Malta and the existence or otherwise of a fixed place of business in Malta are not determining factors.

- 4.3. It is to be noted, nonetheless, that incidental or ancillary links to Malta are not sufficient in order to establish where the activities are performed. For example, a person whose business or employment is based outside Malta is not considered as deriving income from Malta simply because he makes occasional visits to Malta. The delivery of goods or services to customers in Malta, or the storage, display or promotion of goods or services in Malta, is not enough to conclude that the income from the sale of those goods or services arises in Malta.
- 4.4. Passive income arises in the country where the source is situated. Rent and other income from immovable property arises where the property is located. Rent or other compensation for the use of tangible or intangible movable property is usually treated as arising in the country where the lessee is resident or carries on his business. Dividends are normally treated as arising in the country where the paying company is incorporated while interest is treated as arising in the country where the debtor is resident.
- 4.5. Capital gains arise in Malta if the asset that is transferred is situated in Malta.

5. Received in Malta

- 5.1. Income is received in Malta if it is paid to the recipient in Malta. Income paid into an account held abroad is also treated as received in Malta if it is subsequently remitted to Malta.
- 5.2. Proceeds of a capital nature, such as an inheritance or the proceeds from the sale of a capital asset, are not income and the receipt in Malta is not captured under the remittance basis.
- 5.3. Remittances to Malta for ordinary expenses, such as living expenses, are presumed to be remittances of income unless proven otherwise, regardless of the foreign account out of which the remittance is made. When remittances are made for a capital purpose, such as the purchase of property in Malta, and the individual can show that they originate from moneys held abroad as capital, such as an inheritance or the proceeds from the sale of capital assets, they will be regarded as remittances of capital.

6. Minimum tax liability for non-domiciled individuals

- 6.1. The remittance basis of taxation carries with it the obligation of the individual to pay a minimum amount of tax in Malta.
- 6.2. The minimum tax liability for non-domiciled individuals is €5,000 per annum. This amount includes any Maltese tax withheld at source but does not include any tax payable upon the transfer of immovable property situated in Malta in terms of article 5A of the Income Tax Act. This minimum is reduced by any double taxation relief due to the individual. Double tax relief can only be claimed on income that is actually remitted to Malta on which tax has been paid abroad.
- 6.3. The minimum tax liability for non-domiciled individuals does not apply to individuals whose foreign income is less than €35,000. In the case of a married couple, the €35,000 threshold is to be calculated by reference to the total income of the couple and the minimum tax of €5,000 is applicable to the couple.
- 6.4. The individual may opt to be taxed on a worldwide basis, instead of the remittance basis, if his tax liability on a worldwide basis is less than the minimum tax.
- 6.5. The minimum tax liability for non-domiciled individuals described above does not apply to individuals who are beneficiaries of any of the following schemes:
 - the returned migrants scheme
 - the Residents Scheme

- the scheme for high net worth individuals (EU/EEA/Swiss nationals)
 - the scheme for high net worth individuals (non-EU/EEA/Swiss nationals)
 - the Residence Programme
 - the Global Residence Programme
 - the Malta Retirement Programme
- 6.6. These notes are not meant to offer guidance on special schemes. Individuals benefitting under special schemes are advised to consult the relevant rules both in connection with the special tax rates and minimum tax liability applicable to them as well as in connection with the conditions of their eligibility.