BAKER TILLY INTERNATIONAL

Doing Business in Malta

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Preface

This guide has been prepared by Baker Tilly Sant, an independent member of Baker Tilly International. It is designed to provide information on a number of subjects important to those considering investing or doing business in Malta.

Baker Tilly International is the world's 8th largest network of independent accounting and business advisory firms by combined fee income, and is represented by 165 firms in 141 countries and 28,000 people worldwide. Its members provide high quality accounting, assurance, tax and specialist business advice to privately held businesses and public interest entities.

This guide is one of a series of country profiles compiled for use by Baker Tilly International member firms' clients and professional staff. Copies may be downloaded from www.bakertillyinternational.com.

Doing Business in Malta has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing.

Up-to-date advice and general assistance on Maltese matters can be obtained from Baker Tilly Sant, contact details can be found at the end of this guide.

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1 Fact Sheet

Facts and figures as presented in sections 1 through 4 are correct as at 12 May 2016.

Geography

Location:	Southern Europe
Area:	316km^2
Land boundaries:	None
Coastline:	Mediterranean Sea
Climate:	Mediterranean; mild, rainy winters with hot, dry summers
Terrain:	Mostly low, rocky, flat to dissected plains with many coastal cliffs
Time zone:	GMT +1 (GMT +2 during daylight saving time)

People

Population:	425,384 (2013)
Religion:	Roman Catholic is the official religion
Language:	Maltese and English are the official languages

Government

Country name:	Republic of Malta
Government type:	Parliamentary democracy
Capital:	Valletta
Administrative divisions:	68 localities

Political situation

The unicameral House of Representatives generally consists of 65 seats. The Head of State is the President, who is appointed by the House of Representatives for a term of five years. The Head of Government is the Prime Minister, who is generally the leader of the party or coalition with majority support. The President appoints the cabinet on the advice of the Prime Minister.

Economy

GDP – per capita:	US$22,776 (2013)
GDP – real growth rate:	2.9% (2013)
Labour force:	189,081 (2014)
Unemployment:	5.2% (Q1 2016)
Currency (code):	Euro (EUR)

2 Business Entities and Accounting

The main company form in Malta is the limited liability company (private or public). Other business forms include partnerships, branches and associations *en participation*.

2.1 Companies

2.1.1 Limited liability companies

A limited liability company is formed by two or more persons by subscribing to the company's memorandum of association. A private limited liability company may also be formed as a single-member limited liability company. The capital of the company is divided into shares held by the members of the company. The liability of members is limited to the amount unpaid on any shares held by them (if any).

The memorandum of association of a private limited liability company is required to:

- Restrict the right to transfer its shares
- Limit the number of members to 50, and
- Prohibit any public invitation for the subscription of the company's shares or debentures.

Public limited liability companies may issue shares or debentures to the public if the company has complied with legislative requirements.

The minimum authorised and issued share capital requirement for a private limited liability company is EUR1,164.69. The minimum authorised and issued share capital requirement for a public limited liability company subscribed to by two or more persons is EUR46,587.47.

An annual general meeting must be held. Private limited liability companies are managed by one or more directors. Public limited liability companies are managed by two or more directors. Limited liability companies are also required to appoint a company secretary, who may not be the sole director of the company, and one or more auditors.

2.1.2 Company names and registration

The name of the company must be followed by its legal form or relevant abbreviation. The name must not be:

- The same as the name of another entity, or so similar that it could cause confusion
- Offensive or undesirable, or
- Already reserved for registration.

The company's memorandum of association must be submitted to the Registrar of Companies. The company will be registered if all requirements have been satisfied.

2.2 Partnerships

2.2.1 General partnerships (partnership en nom collectif)

A general partnership may be formed by two or more partners by a partnership deed. Partners are jointly and severally liable to an unlimited extent for the debts and obligations of the partnership.

2.2.2 Limited partnerships (partnership en commandite)

A limited partnership may be formed by a partnership deed by one or more general partners with one or more limited partners. General partners are jointly and severally liable to an unlimited extent for the debts and obligations of the partnership. The liability of limited partners is generally limited to their unpaid contribution (if any). If a limited partner, or any other person, holds themselves out to be a general partner, that partner/person will be jointly and severally liable to an unlimited extent for the debts and obligations of the partnership along with the general partners. Limited partners may not take part in the management of the partnership. If they do so, they become jointly and severally liable to an unlimited extent for the debts and obligations of the partnership along with the general partners, and are liable be expelled from the partnership (unless acting on the instructions of the general partners). Limited partners have the right to access accounting records and other documents of the partnership.

2.2.3 Partnership names and registration

The name of the partnership must meet certain conditions, and must not be:

- The same as the name of another entity, or so similar that it could cause confusion
- Offensive or undesirable, or
- Already reserved for registration.

The partnership deed must be submitted to the Registrar of Companies. The partnership will be registered if all requirements have been satisfied.

2.3 Branches

A foreign company (overseas company) may generally establish a branch or place of business in Malta. An overseas company must submit certain documents and information to the Registrar of Companies within one month of establishment of a branch or place of business in Malta.

2.4 Association en Participation

An association *en participation* may be formed by contract where one party takes part in the profits and losses of the business of the other party, or of one or more commercial transactions, in exchange for valuable consideration. Unless otherwise stated, the liability of the contributing party is limited to their contribution. An association *en participation* is not a separate legal entity and is not subject to registration requirements.

2.5 Audit and Accounting Requirements

Companies are required to keep proper accounting records. For each accounting period, the director/s of the company are required to prepare individual accounts comprised of the balance sheet, profit and loss account, notes to the accounts, and any other required financial statements. Individual accounts must provide a true and fair view of the company's assets, liabilities, financial position and profit or loss. Parent company directors are generally required to prepare consolidated accounts in addition to individual accounts. Company directors must prepare a directors' report in respect of each accounting period.

Financial statements must generally be prepared in accordance with the International Financial Reporting Standards (IFRS). Malta has not adopted the IFRS for SMEs. Qualifying small and medium sized entities may prepare their financial statements in accordance with the General Accounting Principles for Smaller Entities (GAPSE).

The annual accounts of the company must be audited by the company's auditor/s.

Accounting records must be kept at the company's registered office or at another location deemed fit by the director/s for a period of at least 10 years.

2.6 Filing Requirements

The director/s of the company is required to submit a copy of the annual accounts, a copy of the auditors' report, and the directors' report to the Registrar of Companies within 42 days from the end of the period for laying the annual accounts at the annual general meeting (which is 10 months after the end of the accounting period for private companies, and within seven months after the end of the accounting period for public companies).

3 Finance and Investment

3.1 Exchange Control

There are generally no exchange control restrictions. However, legislation reserves the right for the Minster responsible for finance to enact regulations on the recommendation of the Central Bank of Malta imposing restrictions on capital transactions and related payments in exceptional circumstances.

Anti-money laundering legislation requires subject persons to maintain internal reporting procedures and to report transactions suspected to involve money laundering or terrorist financing to the Financial Intelligence Analysis Unit (FIAU).

3.2 Banking and Sources of Finance

The Central Bank of Malta is responsible for (amongst others) maintaining price stability, implementing monetary policy, financial stability, and issuing euro currency.

The Malta Financial Services Authority (MFSA) is responsible for supervising financial services in Malta.

Commercial banks operating in Malta provide the majority of financial services.

There are generally no restrictions on foreigners opening bank accounts in Malta (certain documentation and minimum deposit may be required), or on accounts containing foreign currency.

The Malta Stock Exchange (*Borża ta' Malta*) provides a marketplace for listing and exchanging securities.

Private equity and venture capital investors provide investment in Malta.

3.3 Investment Incentives and Restrictions

For business related incentives, see 5.7.

There are generally no restrictions on foreign business investment in Malta.

4 Employment Regulations

For employment tax considerations, see 5.3.

4.1 General Employment Matters

4.1.1 National employment standards

Legislation provides minimum rights and conditions of employment in Malta, including maximum weekly working hours, rest periods, paid annual leave entitlement, paid national and public holiday entitlement, sick leave entitlement, and maternity and parental leave rights.

The conditions of a contract of employment must be provided to the employee in a written statement and include:

- Salary, including benefits
- Period of employment
- Working hours
- Leave entitlement (holiday, sick etc)
- Notice periods required for terminating the contract of employment, and
- Provisions on settling any differences that may arise.

A contract of employment may include a probationary period of employment not exceeding six months in duration. For technical, executive, administrative, or managerial staff whose salary is at least twice the minimum wage, the maximum probationary period permitted is one year. During the probationary period, the employer or employee may terminate the contract of employment without reason; one weeks' notice is required if the employment has exceeded one month.

An employee may terminate a contract of employment of indefinite duration without providing a reason. Where terminated by the employee, an employer may pay wages in lieu of notice. An employer may terminate a contract of employment of indefinite duration on the grounds of redundancy. Where terminated by the employer, the employee may require payment of half-wages in lieu of notice. The notice period required for terminating the contract varies depending on the employee's length of continuous employment. An employer or employee may terminate a contract of employment without notice and without compensation if there is a good and sufficient cause.

From 1 January 2016, the statutory minimum weekly wage for those aged 18 and over is EUR168.01.

4.1.2 Pensions and other benefits

Social security contributions (see 5.3.2) generally provide associated benefits.

4.2 Visas

Citizens of certain countries (including EU member states and Schengen area countries) do not generally require a visa for visits to Malta.

Visas available for entry into Malta include:

- Airport transit visa (ATV)
- Short-stay “C” visa (Schengen), and
- National long-stay “D” visa.

For further information on Malta’s visa requirements, visit www.homeaffairs.gov.mt.

There are generally no restrictions on citizens from EU member states acquiring immovable property in Malta. However, a permit is required for acquisitions of second residences in Malta if the EU member state citizen has not resided in Malta for at least five years. Citizens of non-EU member states require a permit in order to acquire immovable property in Malta.

4.3 Trade Unions

One or more organisations of employees may negotiate and conclude collective agreements with an employer or with one or more organisations of employers.

5 Taxation

Facts and figures as presented in section 5 are correct as at 27 April 2016.

5.1 Corporate Income Taxes

A company is ordinarily resident and domiciled in Malta if it is incorporated in Malta. A company is resident in Malta if its control and management are exercised in Malta. Companies that are both ordinarily resident and domiciled in Malta are subject to tax on their worldwide income. Companies that are either resident or domiciled in Malta are subject to tax on their Maltese source income and on income received in Malta (excluding capital gains arising outside of Malta regardless of where the gain is received). Companies that are neither resident nor domiciled in Malta are generally subject to tax on their Maltese source income, subject to the terms of any relevant tax treaty.

The corporate income tax rate is 35%.

Taxable income generally includes any taxable capital gains (eg in respect of share transfers), subject to exemptions (including the participation exemption). A separate tax applies to transfers of immovable property, see "Other Taxes".

Unutilised losses can generally be carried forward indefinitely. Losses cannot be carried back.

Group relief provisions are available in Malta which permits qualifying companies to offset losses against the profits of another company in the same group.

The tax year is generally the calendar year. The tax authority may authorise the use of an alternative tax period at the request of the taxpayer.

Tax returns are generally due for filing by the date in the return provided by the tax authority.

Companies are generally required to make three provisional payments of corporate income tax (certain exclusions apply). Any remaining corporate income tax due is payable by the deadline for filing the corporate tax return.

5.2 Personal Taxes

Individuals that are both ordinarily resident and domiciled in Malta are generally subject to tax on their worldwide income. Individuals that are either resident or domiciled in Malta are subject to tax on their Maltese source income and on income received in Malta (excluding capital gains arising outside of Malta regardless of where the gain is received). Individuals that are neither resident nor domiciled in Malta are generally subject to tax on their Maltese source income, subject to the terms of any relevant tax treaty.

Single resident individuals and married individuals computing their income separately are generally subject to personal income tax at the following rates (subject to deductions and allowances):

Taxable Income (EUR)	Tax Rate (%)
Up to 9,100	0
9,101 – 14,500	15
14,501 – 60,000	25
60,001 and over	35

Different income bands apply to qualifying parents and to married couples computing their income jointly.

Non-resident individuals are generally subject to personal income tax at the following rates (subject to deductions and allowances):

Taxable Income (EUR)	Tax Rate (%)
Up to 700	0
701 – 3,100	20
3,101 – 7,800	30
7,801 and over	35

There are various special tax regimes available to qualifying individuals, including the rules for Highly Qualified Persons, the Malta Retirement Programme, the Global Residence Programme, and the Residence Programme.

Taxable income generally includes any taxable capital gains (eg in respect of share transfers), subject to exemptions. A separate tax generally applies to transfers of immovable property situated in Malta, see 5.6.

There is no wealth tax.

5.3 Employment Related Costs and Taxes

5.3.1 Fringe benefits

There is no separate fringe benefits tax. Unless specifically exempt, the taxable value of benefits-in-kind form part of the income of individuals and are subject to income tax.

5.3.2 Social security costs

Employers and employees are required to make statutory social security contributions (Class I contributions). Employers and employees each pay the same amount, which in most cases amounts to 10% of salary up to a prescribed maximum.

Private sector employers are required to contribute to a maternity leave fund, generally at the rate of 0.3% of salary.

The basis of assessment is gross weekly salary (or the weekly equivalent of monthly salary).

5.4 Withholding Taxes on Payments Abroad

There is generally no withholding tax on dividend, interest and royalty payments made abroad (if conditions are complied with).

5.5 Value Added Tax (VAT)

VAT is generally levied on the supply of goods and services in Malta, on the intra-Community (EU) acquisition of goods, and on the importation of goods.

The standard VAT rate is 18%. A reduced rate of 7% applies to licensed accommodation services and the use of sporting facilities. A reduced rate of 5% applies to certain supplies, including electricity supplies, certain confectionery, medical accessories, aids for the disabled, printed matter such as books, domestic care services, and admission to museums, art exhibitions, concerts and theatres. Certain supplies are VAT exempt with credit, including exports, international transportation services, pharmaceutical goods, and food for human consumption (excluding food supplied by caterers). Certain supplies are VAT exempt without credit, including qualifying immovable property rentals, financial and insurance services, cultural and religious services, health and welfare services, and education services.

There are three categories of VAT registration:

- Article 10 standard registration — obligatory for taxable persons with turnover exceeding the prescribed annual threshold or who supply services within the territory of an EU Member State and optional for others
- Article 11 small undertaking registration — “VAT exempt” registration applies to taxable persons considered to be small undertakings, ie with turnover not exceeding the prescribed annual registration thresholds, but which do not fall under the exemption threshold, and
- Article 12 registration — obligatory for non-taxable legal persons or for taxable persons (individuals and companies) not registered under Article 10, intending to make intra-community acquisitions of a total value exceeding the annual acquisitions threshold.

Businesses that do not exceed the thresholds are considered to be small undertakings for VAT purposes. The thresholds vary according to the principal nature of the supply (category of activity), but the amount of turnover is based on the total value of all supplies. The VAT registration annual turnover thresholds are as follows:

Economic Activity	Entry Threshold (EUR)	Exit Threshold (EUR)
Mainly the supply of goods	35,000	28,000
Mainly the supply of services with low value added	24,000	19,000
Other	14,000	12,000

The annual acquisitions threshold for registration under Article 12 is EUR10,000.

The annual threshold for distance selling of goods within the EU is EUR35,000.

Registered traders can generally recover the VAT with which they themselves are charged on their purchases of goods and services, subject to conditions and possible exceptions.

5.6 Other Taxes

5.6.1 Stamp duty

Stamp duty applies generally on documents effecting transfers of immovable property or shares and generally at the rate of 2% or 5%. Subject to exceptions, life insurance policies are generally subject to stamp duty at the rate of 10% (0.1% for certain policies that are not renewable annually), and non-life insurance policies are subject to stamp duty at the rate of 11%.

5.6.2 Excise taxes

Excise taxes are imposed on certain goods, including alcohol, alcoholic beverages, tobacco products, energy products, mobile telephone services, and cement.

5.6.3 Immovable property transfer tax

Transfers of immovable property situated in Malta are generally subject to tax at the rate of 8% of the transfer value (the higher of the consideration received and the market value of the property transferred), subject to exemptions. Rates of 2%, 5%, 7%, 10% and 12% apply to certain transfers.

5.6.4 Other taxes

Other taxes in Malta include an eco-contribution, motor vehicle registration tax, and gaming tax.

5.7 Tax Incentives for Businesses

5.7.1 Research and development (R&D) expenditure

Under the Income Tax Act, qualifying scientific research expenditure may be deducted from taxable income. Furthermore, taxpayers may choose to deduct 150% of qualifying scientific research expenditure from their taxable income, subject to a maximum annual deduction of 5% of turnover. Any unutilised deduction may be carried forward to subsequent tax years.

Businesses may be eligible for tax credits or cash grants in respect of expenditure on qualifying industrial R&D or experimental development projects that may contribute to the economic development of Malta. The assistance available ranges from 25% to 80% of eligible costs, depending on the type of project and the size of the business. Any unutilised R&D tax credits may be carried forward to subsequent tax years. This incentive is available until 31 December 2020.

5.7.2 Investment incentives

Initial investments, and the expansion and development of existing businesses, may be eligible for investment aid tax credits. Eligible investments vary depending on factors such as the size of the business, and eligible activities include manufacturing, information technology, call centre activities, R&D and innovation, eco-innovation, waste treatment and environmental solutions, biotechnology, pharmaceuticals, Freeport and logistic operations, and hotels or guest houses.

The tax credit is based either on the tangible and intangible investments costs, or the value of wage costs (as defined). For qualifying investment projects started before 31 December 2017, the maximum tax credit available ranges from 15% to 35%, depending on the size or type of the business. For large investment projects in excess of EUR50m, only half of the applicable tax credit percentage applies on qualifying expenditure between EUR50m and EUR100m. No tax credits are granted in respect of expenditure in excess of EUR100m.

Any unutilised investment tax credits may be carried forward to subsequent tax years.

5.7.3 Enterprise support incentives

Under the Malta Enterprise Act, qualifying projects that may make a substantial contribution to the development of Malta's economy and that are consistent with the aims and objectives of the Government may benefit from support.

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