

THE RESIDENT NON-DOMICILED REGIME

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THE REMITTANCE BASIS OF TAXATION FOR INDIVIDUALS UNDER THE MALTA INCOME TAX ACT

Depending on the residence and domicile of the individual, liability to Maltese income tax arises –

1. on a worldwide basis, or
2. on a remittance basis, or
3. on a territorial basis

(1) The worldwide basis of taxation applies to the income of persons who are ordinarily resident and domiciled in Malta. 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.

(2) The remittance basis applies to persons who are either not domiciled or not ordinarily resident in Malta. Under this remittance basis of taxation, all income arising in Malta is subject to tax, regardless of where it is received. On the other hand, 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 also not subject to tax in Malta, even if they are received in Malta

(3) The territorial basis applies to persons who are not resident in Malta and are subject to tax only on income arising in Malta.

The application of these concepts in Maltese law described above depends on the meaning of various basic terms and concepts, including and especially domicile. 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. Domicile does not depend on nationality. Therefore, a person who takes up residence in Malta, even if for a long or indefinite period, shall be considered as non domiciled in Malta if he has the intention of returning some day to his country of domicile or of settling some day somewhere else. Therefore, a person is considered resident but not domiciled in Malta if he/she retains ties with his original domicile, such ties being still owning a house in his home country, his family or members thereof may still live in his original domicile, he still owns a certain amount of his wealth in his original domicile, etc.

Consequently, a resident non domiciled individual is subject to tax on income arising in Malta, i.e. income derived from employment or from a profession, business or other self-employment when the activities are performed in Malta as well as on income remitted to Malta, i.e. if it is paid to him/her in Malta. Income paid into an account held abroad is also treated as received in Malta if it is subsequently remitted to Malta. 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 therefore considered as non taxable in Malta.

The remittance basis of taxation does however carry with it the obligation of the individual to pay a minimum amount of tax in Malta. The minimum tax liability for non-domiciled individuals is €5,000 per annum. The minimum tax liability for non-domiciled individuals applies to individuals whose foreign income is more than €35,000, thereby implying that irrespective of any amount of income above Eur35,000 earned outside Malta and not remitted to Malta will not be taxed in Malta. It is important to note that 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.