

<b>Jurisdiction's name:</b>	<b>Malta</b>
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<b>Information on Residency for tax purposes</b>
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**Section I – Criteria for Individuals to be considered a tax resident**

Under Article 2 of the Income Tax Act [available under the following link: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8658>] an individual is considered to be resident in Malta except for such temporary absences as to the Commissioner may seem reasonable and not inconsistent with the claim of such individual to be resident in Malta.

In general, individuals who spend more than six months in Malta in a calendar year are likely to be Maltese tax residents [reference is made to Article 13 of the Income Tax Act]. Tax residency in Malta is a facts-based test and the following factors are usually taken into account to determine residency of individuals:

- Place of abode
- Physical presence, i.e. > 183 days
- Regularity and Frequency of visits
- Intention to reside in Malta
- Ties of birth
- Ties of family
- Business ties

Issues of dual residence are normally solved by tax treaties. In cases where the person cannot determine his/her tax residence, it is ideal to consult with a tax advisor.

**Section II – Criteria for Entities to be considered a tax resident**

Generally, as per Article 2 of the Income Tax Act, an entity will be treated as a tax resident of Malta if it is incorporated in Malta. An entity incorporated outside Malta is considered resident in Malta only if the management and control of the entity is exercised in Malta. The term “management and control” is not defined in Maltese tax law, however in practice, in order to establish that management and control is in Malta, the Inland Revenue Department would take into account whether the board meetings of the company are held in Malta, whether general meetings are held in Malta, and whether any other decisions of the company are taken except at meetings in Malta. For dual resident entities, the residence of the entity may be determined by treaty.

The term ‘company’ under Article 2 of the Income Tax Act includes:

- (a) a limited liability company constituted under the Companies or under the Commercial Partnerships Ordinance; or any other company constituted as such under any other law in force in Malta;
- (b) any partnership *en nom collectif* and any partnership *en commandite* constituted under the Companies Act or under the Commercial Partnerships Ordinance, where the partnership has elected to be treated as a company in terms of article 27(6) of the Income Tax Management Act and for as long as such election remains in force;

- (c) any partnership regulated by the applicable provisions of the Civil Code and registered in such manner as may from time to time be provided in terms of the Second Schedule to the Civil Code, where the partnership has elected to be treated as a company in terms of article 27(6) of the Income Tax Management Act and for as long as such election remains in force;
- (d) any European Economic Interest Grouping (EEIG) formed pursuant to the provisions of the Companies Act (European Economic Interest Grouping) Regulations, where the EEIG has elected to be treated as a company in terms of article 27(6) of the Income Tax Management Act and for as long as such election remains in force;
- (e) any body of persons constituted, incorporated or registered outside Malta, and of a nature similar to a company referred to above;
- (f) any body of persons constituted, incorporated or registered outside Malta and of a nature similar to any partnership referred to in (c) to (e) above, where such body of persons has elected to be treated as a company in terms of article 27(6) of the Income Tax Management Act and for as long as such election remains in force;
- (g) any co-operative society duly registered as such under the appropriate law for the time being in force in Malta.

For the purposes of this definition, the term ‘body of persons’ means any body corporate, including a company, and any fellowship, society or other association of persons, whether corporate or unincorporate, and whether vested with legal personality or not.

For the purposes of the above, the following are the links to the relevant legislative instruments:

1. Companies Act Malta:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8853>

2. Commercial Partnership Ordinance:

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8688>

3. Civil Code:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580>

4. Companies Act (European Economic Interest Grouping) Regulations:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10497>

5. Income Tax Management Act:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8841>

### **Section III – Entity types that are as a rule not considered tax residents**

For the purposes of reporting under the Common Reporting Standard, a reportable entity also includes partnerships, trusts or foundations. Thus for reporting purposes, an entity will be held to be ‘tax resident’ in Malta, even if it is usually treated as fiscally transparent or not usually treated as a taxable person.

#### **Section IV – Contact point for further information**

Contact details of the Competent Authority in Malta are the following:

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International Tax Unit

MFSA

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