

## Tax Alert

# Malta clarifies taxation of fees paid to nonresident investment committee members



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The Maltese tax authorities have clarified that nonresident investment committee members of Maltese funds are subject to tax on the portion of remuneration they receive that is attributable to management services that are physically performed in Malta. The clarification is particularly welcome in light of the growth in the Maltese fund industry in recent years.

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### Background on funds in Malta

Maltese law provides for various types of retail and non-retail funds, all of which must be licensed by the Malta Financial Services Authority and comply with ongoing regulation and supervision requirements based on the category of investors the fund is targeting.

Funds may appoint a fund manager or opt to be self-managed. A self-managed fund must fulfill its regulatory and operational obligations by, inter alia, forming an investment committee with a minimum of three qualified members, at least one of which must be a local resident. While the investment committee typically can delegate the day-to-day investment management of the fund assets to one or more portfolio managers, the committee itself is required to hold meetings on at least a quarterly basis, and the majority of the meetings must be physically held in Malta.

The taxation of funds in Malta is relatively straightforward: A general tax exemption is available for qualifying profits and gains, and no tax is levied on distributions to investors. Similarly, no tax is levied in Malta on profits or gains derived by investors on the transfer, redemption, or liquidation of units in the fund.

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## Taxation of fees derived by nonresident investment committee members

Nonresidents generally are taxable in Malta on Malta-source income and gains. In principle, directors' fees are considered to have a Malta source if the company is resident in Malta. Other fees for services rendered typically are considered to have a Malta source if the services are physically performed in Malta.

The Maltese tax authorities have therefore clarified that remuneration for the provision of advice as an investment committee member should be regarded as consideration (payment) for services rendered. Consequently, nonresident investment committee members should be taxable in Malta on the portion of the remuneration they receive that is attributable to the services that are physically performed in Malta.

Because of the complexity of making that determination, the tax authorities have determined that the portion of the remuneration that should be attributable to the portion of the services that are physically performed in Malta is to be computed on an annual basis as the higher of:

- A pro rata amount of the total remuneration received, determined on a per diem basis based on the actual number of days of physical presence in Malta; and
- One-twelfth of the investment committee member's compensation.

However, this treatment may be limited by the provisions of an applicable tax treaty. If a treaty is in force between Malta and the country of residence of the nonresident investment committee member, the treaty may allocate taxing rights to the country of residence, in which case Malta would have no jurisdiction to tax the remuneration received. Malta currently has about 70 tax treaties in force.

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## Malta VAT considerations

Services involving the management of an investment scheme are exempt from VAT in Malta if the services are specific to, and essential for, the core activity of the scheme. Typically, the exemption applies to services supplied to a fund by external fund managers.

However, the basis for the VAT exemption concerns the services, rather than the status or type of person supplying them. Based on principles established in judgments of the European Court of Justice, the VAT exemption may also apply to services provided by investment committee members if the fund for which the services are being provided is a qualifying fund for purposes of the VAT exemption, and all other conditions for the exemption are satisfied.

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For more information please contact:

**Conrad Cassar Torregiani**  
**[ctorregiani@deloitte.com.mt](mailto:ctorregiani@deloitte.com.mt)**

Leader – Cross-Border Tax  
Deloitte Malta

**Marc Alden**  
**[malden@deloitte.com.mt](mailto:malden@deloitte.com.mt)**

Leader – Tax Services  
Deloitte Malta

**Astrid Vroom**  
**[avroom@deloitte.com.mt](mailto:avroom@deloitte.com.mt)**  
Senior Manager – International Tax  
Deloitte Malta

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Deloitte Place  
Mriehel Bypass, Mriehel  
Malta

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