



Trusts and Foundations

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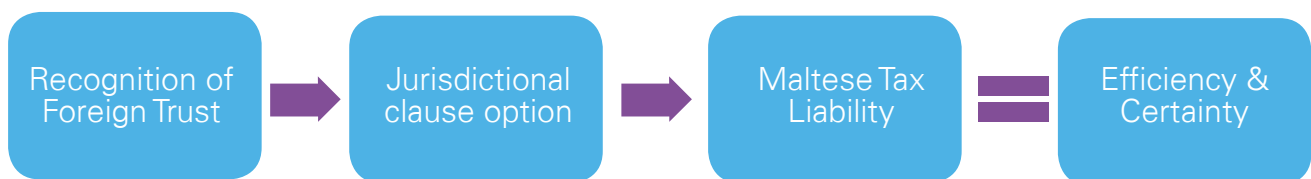


Malta

Malta is a white-listed jurisdiction with a growing reputation as a trust domicile, especially in the wake of attacks on un-cooperative jurisdictions. Malta is a fully-fledged EU Member State, with over 70 double tax treaties based on the OECD Model Convention, and with a solid reputation for professional services of calibre matching that of more well-known trust jurisdictions. Malta is a Civil law jurisdiction which has successfully transposed trust legislation into its system, regulating trusts clearly and enabling domestic Courts to recognise and uphold trust principles. In addition, as of 2010 Malta boasts the Civil law alternative to a trust, namely the foundation. Both institutes are clearly regulated, while each has its own set of tax and other attractive characteristics.

Trusts

Flexibility in choice of law



The proper law of the trust can be either Maltese or foreign law. With the ratification of the *Hague Convention on the Recognition and Enforcement of Trusts*, Maltese courts recognised the validity and enforceability of trusts governed by a foreign law. Therefore the legal principles and jurisprudence of other trust jurisdictions would be enforceable by a Maltese court. A Maltese court would stay proceedings in the event that the trust deed provides for a jurisdictional clause choosing the foreign law governing the trust.

Mandatory rules including 'forced heirship' rules found in Maltese civil law legislation will have no impact on a settlor who is not domiciled in Malta at the time of settlement. Even if he subsequently were to become domiciled in Malta, the law of the settlor's domicile at settlement would preclude the application of Maltese mandatory rules.

And all this while still being subject to the benign taxation in Malta, as follows:

Tax

The Maltese tax system proves to be highly beneficial for trusts set up by non-residents, resulting either in complete neutrality or a low effective rate of tax.



Settlement

A settlor who is not resident in Malta or not domiciled in Malta, settling assets not located or registered in Malta is not subject to tax. Settlement falls outside the scope of the charge to duty where the assets are located outside Malta.

No tax applies also where a non-Maltese resident settlor settles shares where the company which would have issued such shares would have assets that exclude for the most part immovable property situated in Malta.

Trust Income

As soon as one of the trustees establishes residence in Malta, one of the following applies:

Transparency

Where all income of a trust consists of:

- income arising outside Malta; or
- interest or royalties; and/or
- gains or profits arising from the disposal of securities (excluding securities in a company the assets of which consists wholly or principally of immovable property situated in Malta); and/or
- certain prescribed dividend income from Maltese companies; and
- all the beneficiaries are persons who are either not ordinarily resident or not domiciled in Malta,

the trust will be tax neutral or transparent in Malta.

Where at least one of the trustees of a trust is a person resident in Malta, the trust would be subject to Maltese tax provisions, choosing to be transparent or opaque for tax purposes, as explained herein.

Trust income is taxable at 35% with relief for foreign tax by way of unilateral relief

Trust income consisting of qualifying investment income could be subject to a final 15% withholding tax

Election to be treated as a Malta company

A trustee may elect to have some trust income consisting exclusively of investment income accounted for tax purposes as though such income was derived by a Maltese company resulting in:

- tax at 35% at corporation level;
- access to the participation exemption, where applicable; and
- generally non-resident beneficiaries' entitlement to a 6/7ths tax refund on distribution, largely leading to:

5% maximum tax leakage.



Distribution of Trust Property

Where all the trustees are not resident in Malta, and the assets held on trust are located or registered outside Malta, distribution thereof falls outside the scope of Malta's jurisdiction to tax.

Where all beneficiaries are non-resident and the trust assets distributed comprise Maltese securities, an exemption applies where the relevant company's assets do not consist wholly or principally of immovable property situated in Malta.

Where a Maltese resident trustee would have elected that the trust be treated as a company, any gains derived from a share transfer of a participating holding would be tax exempt where all the conditions for the participation exemption are satisfied.

No duty implications arise where a distribution of trust assets excludes Maltese immovable property, and an exemption applies for securities where the company's business is not related to Malta.

Foundations

Maltese law allows for the establishment of private and purpose foundations. A purpose foundation can have any purpose which is legal, and need not have beneficiaries.

Once a foundation is established and the deed is registered, a new legal person is created and the foundation itself becomes the owner of the foundation property. Since foundations have a separate legal existence, they are recognised by legal systems that do not recognise trusts. Also, whereas in the case of a trust, the trustee becomes the assets' legal owner and manages said assets, the founder of a foundation continues to maintain a level of control on the administration of the estate.

A foundation can establish segregated cells to achieve particular purposes with particular assets. In this case, the assets and liabilities of the cell constitute a separate patrimony which is distinct from all other assets and liabilities of the foundation or other cells which may be established.

A foundation may convert into a commercial entity, and in any case, though it cannot be established for the purpose of carrying on a trade, a foundation can be used for the purpose of holding assets, including shares, trademarks or other assets deriving income.

Foundations may be used as fund vehicles for holding of a common pool of assets including pension or employee benefit schemes, as well as a securitisation vehicle.

Foundations registered in a foreign jurisdiction may redomicile or shift their legal seat to Malta, a point that is proving crucial in today's environment where more traditional jurisdictions have found themselves in the spotlight.

Administrators are required to keep accounts for annual financial periods, but are not duty-bound to have such accounts audited or to prepare consolidated accounts.

Tax

A foundation is, by default, treated as a company and thus pays tax at 35% and benefits from Malta's full imputation system. Where applicable, a foundation also benefits from the participation exemption. Distributions by such a foundation are treated as dividends, on which beneficiaries may claim a refund. In addition transfers of a beneficial interest in a foundation are treated as exempt security transfers where qualifying.

Foundations may also opt to be taxed in the same way as a trust, in which case the tax treatment will be as explained above.



Who can administer a trust or foundation?

Malta has 122 regulated trustees, including 13 who may act as foundation administrators.

International trust administrator firms are present in Malta including:

- Abacus
- Alter Domus
- Amicorp
- Bentley Trust
- Blevins Franks
- Citibank
- Dominion
- Heritage
- HSBC Bank
- J P Morgan
- Maitland
- Sovereign
- TMF (including the former Custom House)

The Malta Financial Services Authority (MFSA) is the regulator responsible for the authorisation and supervision of trustees and foundation administrators.

Confidentiality is a key obligation among the fiduciary obligations of trustees and foundation administrators.

A foreign person having a license or authorisation to act as trustee in an approved jurisdiction can benefit from a fast-track application, or even recognition.

What about advice and compliance on the right solution suiting your requirements?

In addition to being industry leaders in the sector, at KPMG we have a fully-fledged team of lawyers willing and able to provide you with guidance and a multi-disciplinary team of lawyers and accountants supporting your compliance obligations. From civil and corporate to accounting and tax matters, we will service your needs and provide you with local insight and international connections.

Speak to us and we will be delighted to assist you in your investment and family matters from A to Z.



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