



Professional Investor Funds in Malta

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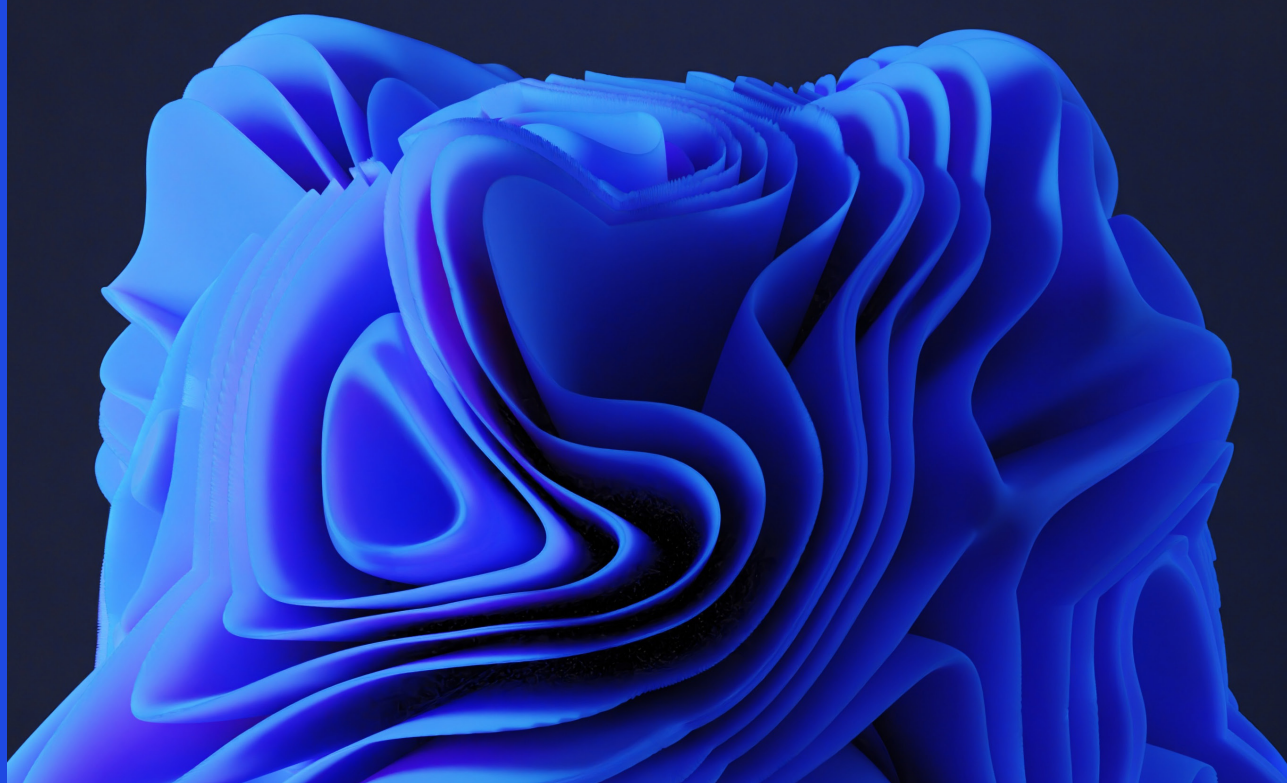




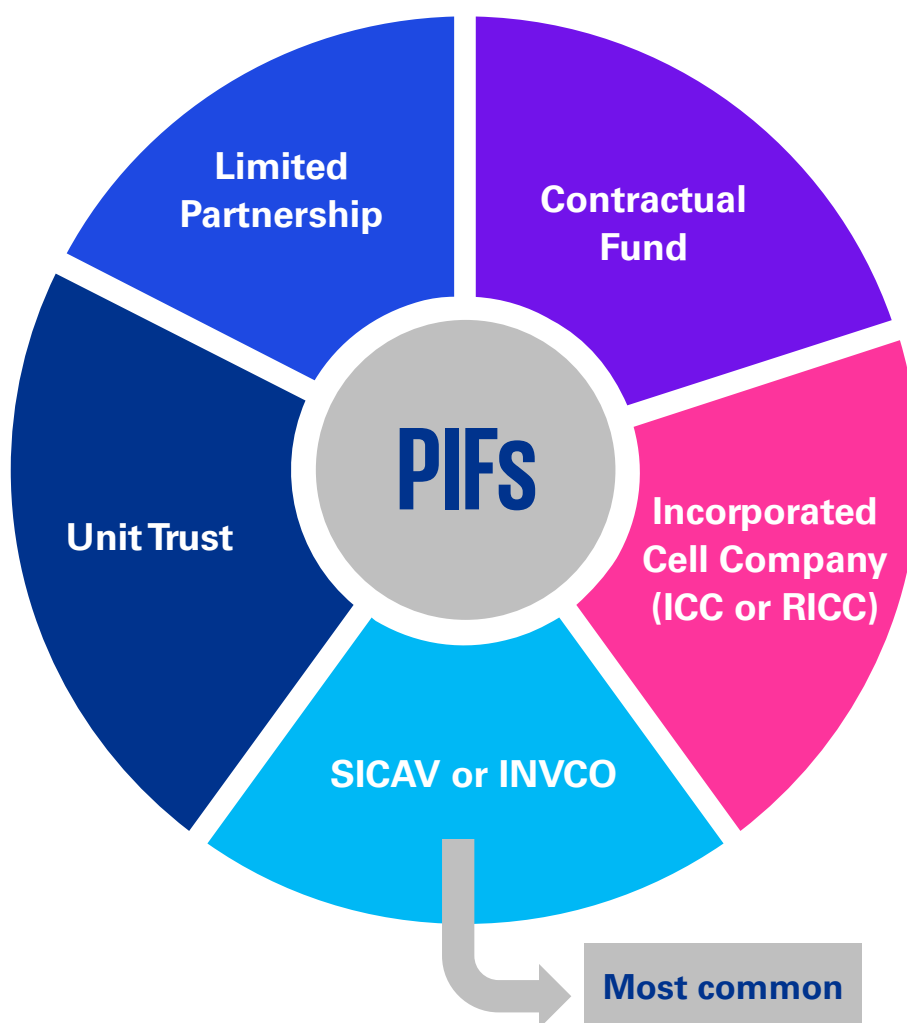
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Professional Investor Funds (PIFs)

This guide aims to provide a high-level overview of the main features and attributes to be considered when setting up a Professional Investor Fund in Malta (PIF).

PIFs may be structured in any of the following forms:



Any of the above legal forms may be set-up as a multi-fund /multi-class CIS, with segregated or non-segregated Sub-Funds. Each type may also be set-up as open-ended or closed-ended.



Background on Professional Investor Funds (PIFs)

A PIF is a non-retail type of collective investment scheme licensable in terms of the Investment Services Act, 1994;

- Investment in a PIF is restricted to persons who meet the criteria applicable to 'Qualifying Investors';
- The minimum amount of investment required in a PIF is EUR100,000
- In general there are no investment, risk spreading, borrowing or leverage restrictions, unless the fund invests in immovable property or through loans. There are however restrictions in specific scenarios such as having a PIF investing in virtual currencies.

Professional Investor Funds



**Qualifying Investors
> EUR100,000**

Classification of Investors for PIFs

Qualifying Investors

Qualifying Investors are defined as meeting at least one of the below criteria.

A “Qualifying Investor”, is an investor which fulfils the following criteria:

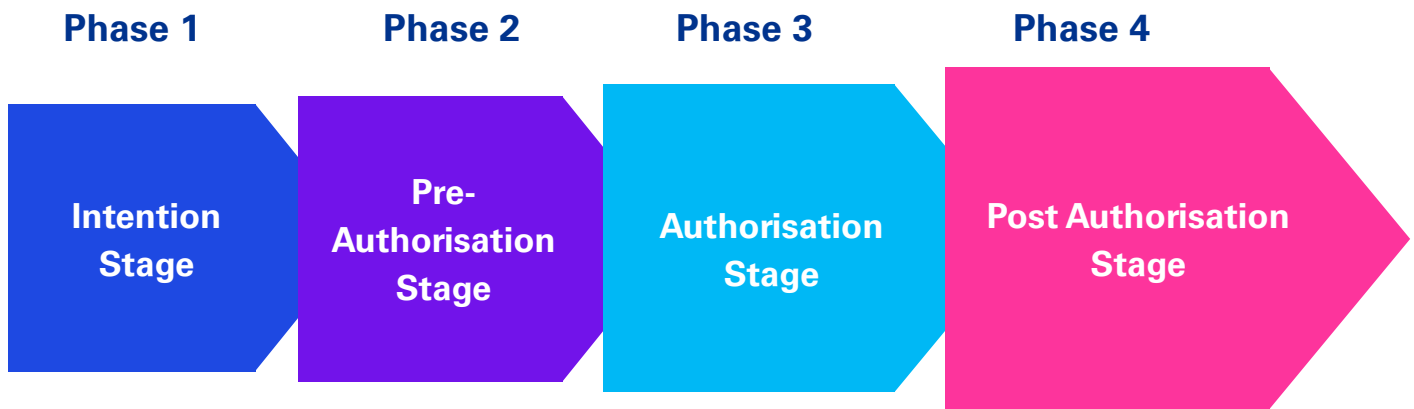
1. invests a minimum of EUR 100,000 or its currency equivalent in the PIF, which investment may not be reduced below this minimum amount at any time by way of a partial redemption; and
2. declares in writing to the fund manager and the PIF, that it is aware of and accepts the risks associated with the proposed investment; and
3. satisfies at least one of the following:
 - is a body corporate which has net assets in excess of EUR 750,000 or which is part of a group which has net assets in excess of EUR 750,000 or, in each case, the currency equivalent thereof;
 - an unincorporated body of persons or association which has net assets in excess of EUR 750,000 or the currency equivalent;
 - is a trust where the net value of the trust's assets is in excess of EUR 750,000 or the currency equivalent;
 - is an individual whose net worth or joint net worth with that of the person's spouse, exceeds EUR 750,000 or the currency equivalent; or
 - a senior employee or director of a service provider to the PIF.



Setting up in Malta



The application and licensing process



Source: Malta Financial Services Authority

Phase 1:

- Initial meeting with the MFSA Authorisation Unit
- Communication of the applicant's intended activities to the regulator
- Preliminary indication by the regulator to move to the second stage

Phase 2:

- Submission of documents in draft form to the MFSA Authorisation Unit
- Fit and proper tests carried out by MFSA on the applicant
- MFSA feedback on documents
- Provision of replies to MFSA queries by applicant
- Completion of review of the application and all documents to the satisfaction of the MFSA
- MFSA will issue its 'in principle' approval subject to licence conditions
- Applicant to finalize all outstanding matters and submit full applicant in final format

Phase 3:

- Registration of company establishing the institution requesting a licence
- Issue of official licence

Phase 4:

- Applicant to satisfy all post licensing matters prior to formal commencement of business
- Ongoing supervision by the Securities & Markets Supervision Unit

The application process

Application Documents:

- completed application form;
- a near final draft of the Offering Document / Marketing Document;
- a draft Memorandum and Articles of Association / Deed of Partnership / Trust Deed;
- a copy of the necessary draft resolutions;
- Promoters, Directors, Founder Shareholders and the persons to be appointed as Compliance Officer and Money Laundering Reporting Officer shall be subject to the “fit and proper” criteria test;
- Promoters of the scheme are to submit an application for Preliminary Indication of Acceptability of the PIF where any one or more of the principal service providers are provided from a country that is not a “recognised jurisdiction”;
- the appropriate fee;
- Supplementary documentation may be requested by the MFSA when:
 - the service providers do not operate from a recognised jurisdiction;
 - the PIF is to be self-managed.

The Application Documents – The Offering Document

The Offering Document

PIFs incorporated in Malta do not need to issue a Prospectus in terms of the Companies Act 1995, but an Offering Document is required for PIFs. The Offering Document is intended to provide sufficient information to enable a potential investor to make an informed investment decision. As an indication, this information should include, but is not limited to:

- appropriate risk warnings;
- confirmation of approval of the Offering Document by the PIF's Board of Directors, General Partner, or Manager;
- name of scheme;
- date of establishment of the scheme and a statement as to its duration, if limited;
- name or style, form in law and registered office;
- in the case of an umbrella scheme, an indication of the Sub-Funds;
- the investment objectives, policies and restrictions of the scheme, together with the extent of use of leverage;
- the identity of all principal service providers, or a description of how the principal functions will be carried out;
- investment or borrowing restrictions, if any;
- specific disclosure requirements about the agreement with the guarantor, if the scheme is being marketed as a guaranteed collective investment scheme;
- specific disclosure requirements regarding the use of "side pockets" if any;
- a brief description of the promoters.

The Offering Document must be approved by the PIF's Board of Directors or Manager in writing prior to being submitted to the MFSA for approval. Once the Fund is established, changes to the Offering Document must similarly be approved before filing with the MFSA prior to implementation.

Functionaries and Other Officers/Service providers



External Valuer

*This is specific to Virtual Currency funds, please put this in the diagram above in a different colour to show this is only for VC funds

*Competency requirements for Virtual Currency funds must be

** Areas highlighted in red are specific to Virtual Currency funds

** satisfied

Functionaries and Other Officers

	Investment Manager	Fund Administrator	Custodian or Prime Broker	Investment Advisor	Investment Committee	Compliance Officer and MRLO
Qualifying Investor Fund	Required - unless it is a self-managed Fund	May be appointed	May be appointed	May be appointed	Required if self managed	Required

Directors and board meetings

- PIFs must have at least one director resident in Malta.
- PIFs must have at least one board meeting every quarter, and meetings must be held in Malta or initiated from Malta by conference call.

PIFs Investing in Virtual Currencies

A PIF investing in Virtual Currencies will need to adhere to a number of supplementary license conditions, including:

- Competence - the parties to the scheme and service providers require sufficient knowledge and experience in the field of information technology, virtual currencies and their underlying technologies.
- Board of Directors - One member of the Governing Body of the scheme needs to satisfy the competence requirements above
- Quality assessment of virtual currencies - the manager needs to ensure that appropriate searches are carried out to assess the quality of the cryptocurrencies being invested into
- Verification and Valuation - External valuer who fulfils the competence requirement must be appointed to conduct the required verification and valuation of the scheme's investments in cryptocurrencies
- Risk and Liquidity Management - ensure cryptocurrency is within risk profile, liquidity management system in place
- Investment Committee - Must meet competency requirements outlined above

Further considerations

Board of directors

The PIF shall have a Board of Directors which is composed of one or more Directors, and shall at all times have one or more Directors who are independent from the Manager and the Custodian. At least one of the Directors must be a Maltese Resident.

The Board of Directors is collectively responsible for the management of the assets of the Fund, and for ensuring to organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements.

As per the MFSA's corporate governance guidelines, all directors will need to satisfy the "fit and proper" test on a continuing basis. The Board of Directors is expected to hold regular board meetings and shall ensure that detailed minutes are taken and kept in Malta.

Fund manager and Assets under management

A PIF can either be self-managed or may appoint an external third party fund manager.

The total assets under management in either case, of an unleveraged Fund cannot exceed EUR500 million provided that there are no redemption rights during the first 5 years from initial investment. Otherwise, the total assets under management cannot exceed EUR 100 million (if leveraged).

Investment committee

In the case of a self-managed PIF, the Board of Directors is expected to establish an in-house Investment Committee made up of at least three members, whose composition may include members of the Board of Directors. If no Investment Committee is established, its functions shall be explicitly taken over by the directors of the Fund.

The Terms of Reference of this Investment Committee regulating the proceedings of the Investment Committee and any changes thereto, is subject to a notification to the MFSA. Furthermore, the MFSA must be satisfied that the members of the Investment Committee are 'fit and proper' as well as sufficiently competent to take on such role.

Investment Committee meetings are expected to be held at least, on a quarterly basis physically in Malta and are minuted accordingly. The minutes of meetings of the Investment Committee should be available in Malta for review during any MFSA compliance visits.

Specific requirements in relation to Limited Partnerships (LPs)

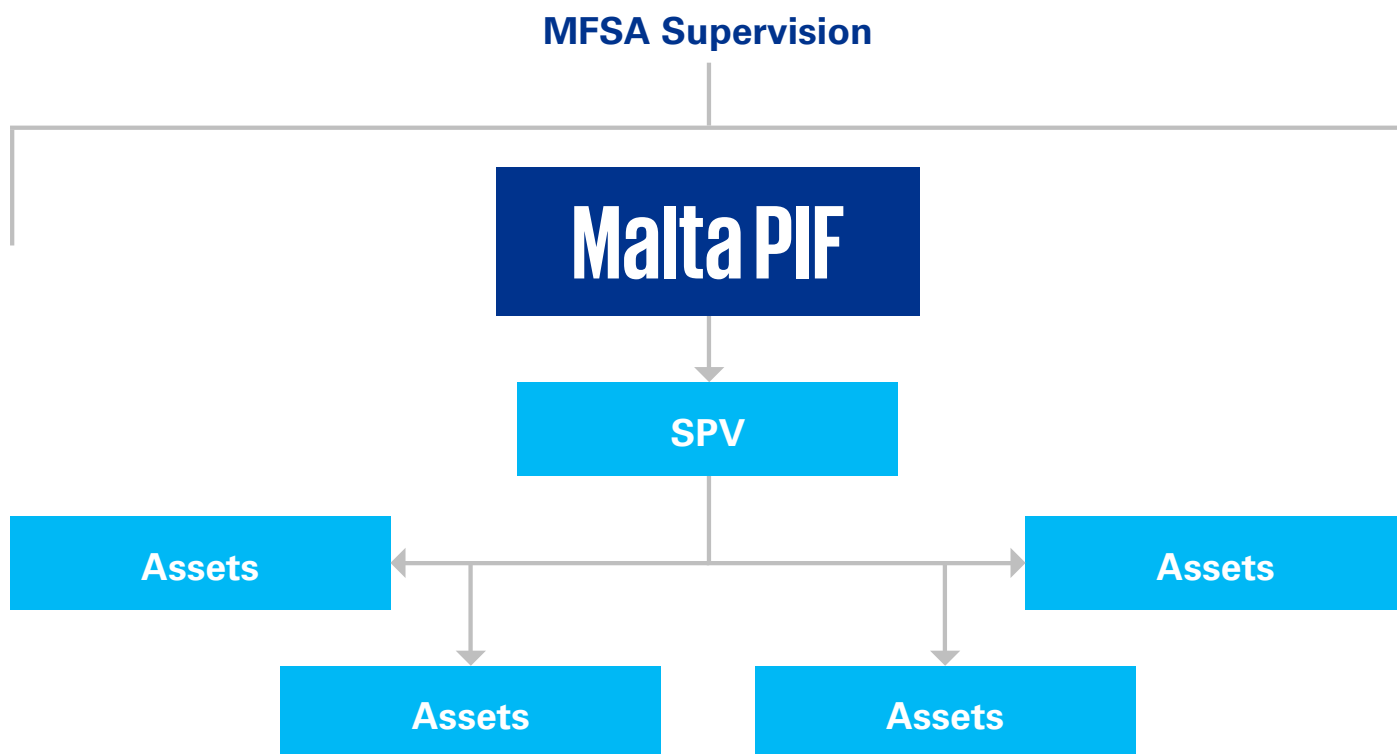
Schemes set up as a LP may be incorporated as either:

- Multi Class or Umbrella LPs with variable share capital and sub-classes, or
- LP/Partnership en commandite with variable share capital and without sub-classes

General Partners shall be any of the following:

- a company licensed under the Investment Services Act for the provision of fund management
- a company falling within the exemptions applicable to overseas fund managers
- any other entity of sufficient standing and repute as approved by the MFSA
- any other individual who satisfies the fit and proper test
- The MFSA shall be entitled to be satisfied on a continuing basis, of the fitness and propriety of the General Partner(s) and of any party appointed by the scheme
- The scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative, and financial procedures and controls to ensure compliance with all regulatory requirements.
- Usually a PIF is set up as a limited partnership for tax reasons relating to the domicile of the fund investors
- The scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative, and financial procedures and controls to ensure compliance with all regulatory requirements.

Special Purpose Vehicles (SPVs)



Board of directors

- An SPV is a special purpose vehicle:
 - set up by the PIF as part of its investment strategy for the purpose of achieving its investment objectives; and
 - owned or controlled via majority shareholding of the voting shares either directly or indirectly by the PIF.
- SPVs must not be established in a jurisdiction black-listed by the FATF.
- The PIF shall – through its Directors - at all times maintain the majority directorship of any SPV.
- The SPV should appoint one or more independent directors.
- The PIF must ensure that the investments effected through any SPV are in accordance with the investment objectives and policies of the PIF.
- The Offering Document should disclose the PIF's intended use of SPVs in the Investment Policy section.
- The SPV shall be supervised jointly with the PIF by the MFSA.
- SPVs can be used for PIFs investing in Virtual Currencies

Property Funds

- The MFSA has issued a Property Funds Policy, providing a set of rules which all property funds are required to observe.
- A Fund investing more than 20% of its NAV in immovable property is classified as a Property Fund.
- The Property Funds Policy applies to funds whose main objective is investing in immovable property promoted to Qualifying Investors.

Property Funds Investment Restrictions

Professional Investor Property Fund targeting Maltese resident investors

	Investment in immovable Property in Malta	Investment in immovable Property outside Malta	Borrowing for liquidity purposes	Leverage to acquire immovable property	Leverage restrictions
				Open ended PIF	Closed ended PIF
Qualifying Investor	Permitted	Permitted	Unrestricted	<50% NAV	No restrictions

Annual Costs Incurred by PIFs

The following is an indication of some annual costs incurred by a PIF established in Malta and using Maltese service providers.

Expense Category	Cost per annum €	Comments
Rent, if required	200 - 350 / sq metre	Space in a medium to high range commercial block
Audit fees	Starting from 4,500	Will vary depending on frequency of NAV, asset class and jurisdiction of assets.
Administration Fee	0.1% - 0.2% of NAV (Min 20,000)	
Custody Fees	0.2% - 0.3% of NAV (Min 25,000)	
Local Director	Starting from 8,000	

This information is for indication purposes only and may vary according to the nature and particulars of the fund, and of the service provider.

Reporting Requirements

- The scheme (or the Manager or Administrator on its behalf) shall submit copies of the scheme's annual audited financial statements and half-yearly report (if any) to the MFSA and such other information, as the MFSA may from time to time request.
- The scheme shall also submit to the MFSA any statistical returns which may be required by the Central Bank of Malta to fulfil European and other relevant reporting obligations.



Listing of Funds

Listing

- A PIF that is not a private company may seek listing on the Malta Stock Exchange.
- The benefits of such a listing comprise:
 - enhancing the security's international profile;
 - capital gains on the disposal or transfer of a holdings by Maltese residents will be exempt from taxation in Malta;
 - the security becomes more marketable as some institutional investors (such as pension funds) may only acquire units in funds that are listed.





Taxation for Funds and Fund Managers



Taxation

Taxation of Funds

- The tax treatment of a licensed collective investment scheme depends on the classification of the fund as a prescribed or non-prescribed fund.
- A fund that has assets situated in Malta constituting at least 85% of its total asset value is classified as a prescribed fund; other licensed funds which do not meet the local asset test, including funds in an overseas-based scheme, are classified as non-prescribed funds.
- Non-prescribed funds qualify for a blanket exemption from tax on income and capital gains realised on their investments, to the exclusion of income and gains from immovable property situated in Malta.
- Prescribed funds qualify for an exemption from tax on income and capital gains realised on their investments to the exclusion of income and gains from immovable property situated in Malta and certain prescribed investment income earned by the fund. The withholding tax on local investment income is 15% for bank interest and 10% for other prescribed investment income.
- A fund which invests in cryptocurrencies and distributed ledger technologies is treated the same as any other fund for tax purposes.

Taxation on Funds

Taxation of non-resident Investors

Non-residents are not subject to tax in Malta, whether by way of withholding or otherwise, on the distribution of the fund's income, whether in the form of dividends, interest and liquidation, or on capital gains derived from the disposal of units in both prescribed and non-prescribed funds, whether by way of transfer, redemption or cancellation of such units.

Transfer taxes, stamp duty

Issue of units or shares do not attract any stamp duty. Transfer of shares/units in licensed funds may benefit from an exemption from stamp duty.

Capital duty, net wealth tax

Malta has no net worth tax or similar tax on capital. No tax is imposed on the fund's NAV.

Taxation of Fund Managers and advisors

- Fund managers and advisors incorporated and tax resident in Malta are subject to Malta's general system of taxation, subject to tax in Malta on world-wide income, including chargeable capital gains at the standard corporate tax rate of 35%, subject to relief by ordinary credit method for foreign tax suffered.
- A fundamental pillar of Malta's general tax system is the full imputation system which includes a tax refund system. This system completely eliminates the economic double taxation of company profits whereby shareholders, wherever resident, in receipt of dividends, are entitled to a tax credit equal to the tax borne by the distributing company on the profits out of which the dividends are paid. Since the tax rate of 35% applicable to companies is the highest tax rate in Malta, shareholders do not suffer any additional tax on the receipt of dividends.
- In addition, upon a dividend distribution of taxed profits, the shareholders of a company registered in Malta (i.e. a company resident in Malta or a non-resident company with a branch in Malta) are eligible to claim a partial tax refund of the Malta tax charge of the distributing company, with the exclusion of tax suffered by the distributing company on income derived directly or indirectly from Maltese immovable property. The applicable tax refund for shareholders of fund managers and advisors is generally 6/7ths of the 35% tax, resulting in an effective rate of tax on distributed taxable profits of a maximum of 5%.
- The tax refund system, which was formally approved by the EU Commission and Code of Conduct group, extends to both resident and non-resident shareholders, and applies to all taxed profits derived from local and foreign sources, with the exclusion of profits derived directly or indirectly from immovable property situated in Malta.
- Income tax consolidation rules grant the option for a group of companies to be treated as a tax group upon complying with certain requirements. This tax grouping enables a cash flow benefit when compared to the current operation of the partial shareholder tax refund mentioned above in that the 35% tax need not be paid and then partially reclaimed; instead the tax group is taxed at the effective tax rate.
- Furthermore, such companies have the option to avail of a Notional Interest Deduction (NID). The NID rate is calculated at the risk free rate set on Malta Government Stocks with a remaining term of approximately 20 years plus a premium of 5% and the deduction is calculated by multiplying the NID rate by the balance of risk at year end. The NID is limited to the lower of 90% of the chargeable income and the amount of the NID for the year. Depending on the amount of risk capital of the company and the chargeable income for the year, the effective tax rate of the company may be reduced to as low as 3.5%.

Other Tax matters

- **Participation Exemption:** Dividends and gains derived from qualifying participations are fully exempt from tax.
- **Capital Gains:** The transfer of shares in a resident company by a non-resident is generally exempt from tax on capital gains, provided there are no interests in immovable property.
- **Stamp duty:** The issue or transfer of shares in Maltese companies, the majority of whose business interests are situated outside Malta, is generally exempt from stamp duty.
- **Capital taxes:** Malta has no net worth tax or similar taxes on capital.
- **Withholding Taxes:** Malta does not impose any withholding taxes on interest, royalties, dividends and proceeds from liquidation.
- **Double taxation agreements (DTAs):** Successive Maltese governments have sought to conclude DTAs with important trading partners, as well as with emerging countries. The circa 80-strong treaty network is expected to grow further in the coming years.
- **Malta is compliant with international tax standards:**
 - Malta is a member of the OECD Base Erosion and Profit Shifting (BEPS) Inclusive Framework and is fully co-operative in the international initiative against tax evasion. Malta fully applies EU law and all OECD initiatives on combatting tax evasion, including the directives on mutual assistance between tax authorities, automatic
 - exchange of information, as well as the exchange of tax rulings and advance pricing arrangements in the transfer pricing field.
 - Malta was also an early adopter of the Common Reporting Standard and Country-by-Country reporting obligations.
 - Malta is effectively implementing the requirements of the OECD BEPS standards into its tax system through the transposition of the EU tax directives (various anti-tax avoidance measures have been transposed into Maltese tax law through the Anti-Tax Avoidance Directive and mandatory disclosure rules for tax intermediaries and tax payers, in addition to the above measures), as well as through the adoption of international instruments, including the Multilateral Instrument to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

Value Added Tax

- Malta has a value added tax (VAT) system modelled on the EU VAT Directive.
- The standard rate in Malta is 18%.
- Generally, activities undertaken by Funds do not attract VAT. Nonetheless, Funds may be required to register for VAT in Malta if they procure reportable services from non-Maltese suppliers.
- The supply of services consisting of the management of investment schemes, including collective investment schemes, is exempt from VAT without credit. The fund management VAT exemption also covers administration services insofar as these services are limited to those acts that are specific to and essential to the core activity of the scheme.

Value Added Tax

- Malta operates an attractive expatriate taxation regime. Individuals who are resident but not domiciled in Malta are subject to tax on Maltese source income (employment income for work carried out in Malta) and capital gains, and foreign source income, only to the extent that the latter income is received or remitted to Malta.
- In order to attract top professionals, Malta introduced a Highly Qualified Persons scheme which allows eligible persons, namely resident non-domiciled individuals occupying eligible offices in the financial services sector, including employment with funds and fund management companies, to apply a reduced 15% income tax rate to their salary for an eligibility period, provided that such income, excluding the value of any fringe benefits, amounts to at least €84,991 for 2019, as adjusted annually for inflation.
- Furthermore, no tax would be charged on qualifying income exceeding €5,000,000 earned during the eligibility period.
- Eligible offices in the financial services sector include positions such as Chief Executive Officer, Chief Operations Officer, Chief Financial Officer, Chief Risk Officer, Chief Investment Officer, Portfolio Manager, Senior Trader, Head of Marketing, Head of Investor Relations.
- A number of conditions must be satisfied in order to be eligible for the flat tax rate, which include amongst others that the income must arise from a qualifying contract of employment; the person must not be domiciled in Malta; the person must have health insurance in respect of all risks for himself/herself and the members of his/her family; and the person may not have received any other benefit or arrangement in terms of business incentive laws.
- Alternatively, expatriates employed within the fund sector may benefit from 10-year exemption on the taxation of certain fringe benefits, including relocation expenses, accommodation expenses and a monthly subvention of €600 per month.

Taxation

Malta's Double Tax Treaty Network

Albania	Guernsey	Netherlands
Andorra	Hong Kong	Norway
Armenia	Hungary	Pakistan
Australia	Iceland	Poland
Austria	India	Portugal
Azerbaijan	Ireland	Qatar
Bahrain	Isle of Man	Russia
Barbados	Israel	Romania
Belgium	Italy	San Marino
Botswana	Jersey	Saudi Arabia
Bulgaria	Jordan	Serbia
Canada	Korea	Singapore
China	Kosovo	Slovakia
Croatia	Kuwait	Slovenia
Cyprus	Latvia	South Africa
Curaçao	Lebanon	Spain
Czech Republic	Libya	Sweden
Denmark	Liechtenstein	Switzerland
Egypt	Lithuania	Syria
Estonia	Luxembourg	Turkey
Ethiopia	Malaysia	Tunisia
Finland	Mauritius	UAE
France	Mexico	UK
Georgia	Moldova	Ukraine
Germany	Monaco	Uruguay
Greece	Montenegro	US
Ghana	Morocco	Vietnam

Appendices



Comparing Malta with other jurisdictions - Taxation





The Maltese Climate

The Maltese islands enjoy a pleasant, temperate climate, characterised by long, dry summers, with cooling sea breezes, followed by short, wet winters. Temperatures rarely dip below 5 degrees centigrade in winter, while summer peak temperatures hover around the low thirties. Snow is unheard of and outdoor activities are possible throughout the year.

- The Maltese islands benefit from 3,000 hours of sunshine during the year.
- Annual rainfall is quite low, with an average of 700mm of rain annually



Cultural and social life



Albeit a tiny country, Malta's location at the centre of the Mediterranean has endowed it with a rich cultural heritage one would normally expect to find in much larger, more historically dominant states. The various empires and cultures which colonised the island all left their mark, resulting in a vibrant, eclectic mix just waiting to be discovered by visitors. Enhanced by the country's compact size and the mild climate, opportunities for leisure activities are varied and numerous. From scuba diving, rock climbing and various other outdoor sports for the more adventurous, to a wide range of cultural activities such as concerts, theatre productions and outdoor festivals spread throughout the calendar, there is little time for one to get bored in this small, but vibrant island state.

Education

Malta has a well-established educational system, based on the UK model, a reflection of the many years spent as part of the British Empire. Nowadays, one finds a mixture of state and private schools, providing qualifications up to post-graduate level, all fully recognised on an international level. International students fit in seamlessly into a system geared to meeting their needs.



Health Care

Based on the British National Health Service model, the system in Malta is further boosted by a strong element of private health care for those who choose to go down this route. The overall quality of care is of the highest order and foreign residents draw comfort from the fact that all health care workers are very fluent in English, ensuring that communication between provider and patient is very straightforward.



Transport



Domestically the country is served by an extensive road network, covering all parts of the island, with a regular ferry service to the neighbouring island of Gozo. Most Maltese are private car owners although a reliable public transport service consisting of buses and taxis means that car ownership is not strictly necessary. Indeed, most foreign residents staying in Malta for relatively short periods make use of the public transport option. Internationally, regular, daily flights to important European and Middle-Eastern hubs as well as fast ferry services to mainland Europe mean that one is never more than a few hours away from one's destination. Cargo services, both inbound and outbound, are catered for by an extensive network of both air and sea routes which connect the island to the rest of the world via its airport and the Malta Freeport, which is the third largest in the Mediterranean, handling in excess of 3 million units per annum.

Safety

Malta is one of the safest countries worldwide, having been recently ranked as the seventh safest small country globally. It is a country where one's children can still go off with their friends for a day at the beach without any undue concerns on the part of their guardians. Violent, random crime is a rarity, leading to noticeably diminished levels of tension.





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