TRIDENT TRUST

Malta

Key Facts
Companies

A Maltese company can be registered in terms of the Companies Act, 1995 ("the Act") as a Public Company or a Private Company. Malta's companies regime offers numerous planning benefits to international businesses and investors.

A private company is a company whose Memorandum & Articles:

- Restricts the right to transfer its shares.
- Limits the number of its members to fifty.
- Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

A Public Company is one that does not meet the above criteria for classification as a private company.

Principal Features of a Private Company

- A minimum of two shareholders being natural or legal persons. It is possible to register a Private Company as a single member company however certain restrictions apply.
- Shareholders may be Maltese or non-Maltese resident. Nominee shareholders can also be appointed provided that they are authorised by the Malta Financial Services Authority ("MFSA") to provide nominee services.
- Minimum of one director, being a natural or legal person, resident or non-resident in Malta.
- A company secretary must be appointed. The company secretary must be a natural person and this office can be held by a resident or non-resident person.
- Minimum authorised and issued share capital of EUR1,165, 20% of which must be paid up upon incorporation.
- A company can have different share classes, with differing rights attached to each share class.
- Free choice of currency of share capital, of functional currency for accounting purposes and for the settlement of any tax payable.
- The company must have a registered office in Malta.
- Every company must hold an Annual General Meeting.
- A company must file audited financial statements (prepared under International Financial Reporting Standards as adopted by the EU) with the Registrar of Companies. Companies may qualify to file abridged audited financial statements should they fall within the size criteria for 'small' companies. In addition, a company is required to file an annual return with the Registrar of Companies, within 42 days of the anniversary of incorporation.
- A company must file a tax return together with its audited financial statements with the Commissioner of Inland Revenue.

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The Benefits of a Maltese Company

- Ease of incorporation (in most cases 24 – 48 hours).
- Low minimum capital requirements (minimum of EUR1,165 with 20% being paid-up).
- No corporate tax on holding companies in respect of dividends and gains derived from underlying entities qualifying as participating holdings.
- A Malta tax burden of 5% (and in certain cases possibly less) through a simple tax refunds mechanism that shareholders are entitled to claim, amounting to 6/7ths of the corporate tax rate of 35% incurred at company level. Such refunds are payable to shareholders within 14 days of making a valid refund claim.
- No withholding taxes on dividends, interest and royalties paid out of the Company to non-residents.
- Capital gains on the transfers of shares in a Maltese Company by non-resident shareholders are normally exempt.
- No thin capitalisation rules.
- A very flexible transfer pricing regime.
- No CFC legislation.
- No stamp duty is payable on the issuance of shares upon incorporation. Stamp duty payable upon the issuance of further shares or share transfers in Companies held by non-residents can also be exempt subject to certain conditions being met.
- Extensive use of Malta's double tax treaty network spanning across 57 countries.
- As an EU member, the application of provisions in the Parent-Subsidiary Directive and Interest & Royalties Directive result in further tax planning opportunities for a Malta Company.
- Low registration and low annual return fees. These vary with the authorised share capital and range from EUR245 – EUR2,250 for registration fees (non-recurring) and EUR100 – EUR1,400 for annual return fees.
- Possibility of redomiciling companies to and from Malta and no entry/exit taxes arising from these redomiciliations.
- No exchange controls.
- Tax losses can be carried forward indefinitely.
- Advance revenue rulings can be obtained from the Income Tax Department – valid for five years.
- Dedicated unit at the Income Tax Department dealing with international structures and able to issue guidance on a case by case basis.

Taxation

The following is an overview of the tax treatment of Companies in Malta. This overview is of a generic nature and additional rules may apply depending on the specific circumstances of a proposed structure.

Corporate Taxation

The standard rate of tax applicable for a Limited Liability Company's income and chargeable gains is 35%. However, due to a tax refund system that applies at shareholder level, the effective Malta tax burden ranges from 0% to 5%[1] as explained below.

[1] In a limited number of cases, where the income earned by the company is foreign source 'passive' interest or royalties (the income must not derive directly or indirectly from a trade or business and any foreign tax suffered is less than 5%) the applicable refund of the tax (35%) levied in Malta at the company level is 5/7ths. This results in a Malta tax leakage of 10%. Where the conditions for claiming a 6/7ths or 5/7ths refund are not met, in respect of foreign source income, it may be possible to claim a refund of tax amounting to 2/3rds of the Malta corporate rate of 35%.

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Malta operates a full imputation system of taxation which means that when a Company distributes dividends out of profits on which it had paid tax, no further tax arises in the hands of the shareholders as a credit for the tax paid by the distributing Company is claimed by the shareholders. No withholding taxes therefore operate on dividends paid to shareholders.

Basis for Taxation

A Company incorporated in Malta is considered to be both resident and domiciled in Malta and subject to income tax on its worldwide income and certain types of capital gains.

A Company that is not incorporated in Malta can be tax resident in Malta if management and control of the Company is carried out from Malta.

A Company that is resident but not domiciled in Malta is taxable on:

- Income arising in/certain capital gains derived from Malta whether or not received in Malta.
- Income arising outside of Malta which is received in Malta.

Capital gains arising outside Malta, whether received in Malta or not, are exempt from taxation in Malta in view of the non-Malta domicile of the Company.

A Company that is non-Malta resident and non-Malta domiciled (for example, a Malta branch of a Company registered elsewhere) would be subject to tax on income and certain types of capital gains arising in Malta only.

Capital Gains

Only certain types of capital gains are taxable under Malta's tax regime and these include the transfer of immovable property, goodwill, patents, trademarks and securities. 'Transfer' includes transfer by sale, donation, sale by installments, partition, distribution, among other forms.

A number of exclusions to the taxation of capital gains apply examples of which are included below:

- No taxation of capital gains arising from transfers of shares in Maltese companies or of an interest in a Maltese regulated collective investment scheme by non-residents
- No taxation of capital gains arising from the disposal, redemption or repayment of debt instruments, derivative instruments as well as equity instruments with no entitlement to participate in the profits of the debtor or whose return is limited to a fixed rate of return (for example, preference shares).

Tax Refunds

- Distributions of profits taxed in the hands of the company qualify the recipient shareholder/s for a refund of the tax paid by the Company.
- The possibility and extent of the refund varies depending upon the type of income (Malta source, foreign source etc.) generated by the Company.
- In many cases, the Malta tax burden (after the application of the refund to shareholders) amounts to 5%.
- A company that is in receipt of foreign source income may reduce its Malta tax burden further through the application of double taxation reliefs – when applied in conjunction with the refund of company tax, the Malta tax leakage can potentially also drop to 0%.
- Tax refunds are payable by the Inland Revenue Department within 14 days from the date on which a valid tax refund claim is made.

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Participation Exemption

- Income or capital gains derived by a Malta Company from a non-Maltese holding qualifying as a participating holding (generally a 10% equity holding or partnership interest or alternative tests) are exempt from tax,[2] subject to certain anti-abuse provisions being satisfied. In this instance the income or capital gains generated by the Malta Company through the participating holding has a 0% Malta tax burden.
- The flexible participating regime makes for the use of Malta as a holding company jurisdiction. When combined with the fact that no withholding taxes are applied upon distribution of dividends to shareholders, the vehicle effectively results in no tax leakages at the level of the Malta entity.

[2]Alternatively the income or gains derived from the participating holding are taxed at 35% at the company level and a refund of 100% claimed by the shareholders, following distributions of dividends to them by the company.

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