

KEY FACTS TRUSTS

THE PRINCIPAL LEGISLATION REGULATING TRUSTS IN MALTA IS THE TRUST AND TRUSTEES ACT, 2004 ("THE ACT").

Some salient considerations in respect of Maltese trusts are set out below:

- > Neither the settlor, nor the beneficiaries under a Maltese trust need to be resident in Malta.
- > Maltese trusts do not need to be registered.
- > Having ratified the Hague convention, Malta recognises trusts set up under foreign laws.
- > The Act provides the possibility of a protector being appointed to monitor the actions of the trustee.
- > Maltese rules on forced heirship only apply to the extent that the settlor is domiciled in Malta at the time of his/her demise.
- > A Maltese trust may continue until the 100th anniversary of its creation, unless it is terminated earlier. This does not apply to a trust created for a charitable purpose, to a unit trust or to a retirement scheme.

REGULATION OF TRUSTEES

In addition to anti-money laundering legislation, the Act requires all trustees to be authorised to provide trustee and fiduciary functions. Furthermore:

- > All the trustee's principal persons must pass a fit and proper test;
- > Trustees are required to comply with a Code of Conduct issued by the Malta Financial Services Authority ("the Authority"); and
- > Monitoring of trustees takes place through regular on-site visits by the Authority.

THE TAXATION OF A MALTESE TRUST

- > Subject to the income attributable to a trust consisting of income arising outside Malta OR of interests/royalties OR of specific types of capital gains, and provided that all the beneficiaries are non-resident, a trust can be treated as a transparent vehicle for Malta income tax purposes under 'look-through' provisions of Malta's tax legislation.
- > Accordingly no tax on income or chargeable capital gains earned by the trust is deemed to arise at the trust level and the income/gains are treated as income/gains derived directly by the beneficiaries. No tax leakage therefore arises in Malta.
- > A trust may alternatively elect to be treated as a corporate entity in which case the provisions applicable to the taxation of companies apply.
- > Election for treatment as a company means that the trust can benefit from features of Maltese taxation applicable to companies including the participation exemption in respect of participating holdings¹, eligibility for tax refunds and other tax reliefs arising from Malta's extensive double taxation treaties.

¹ Income or capital gains derived by a Malta company from a non-Maltese holding qualifying as a participating holding (generally a 5% equity holding or partnership interest or alternative tests) are exempt from tax, subject to certain anti-abuse provisions being satisfied (in the case of dividends only). In this instance therefore the income or capital gains generated by the Malta company through the participating holding has a 0% Malta tax burden.

HOW WE CAN ASSIST

For more information, please contact Albert Cilia, Managing Director of our Malta office, at acilia@tridenttrust.com, or either of our Trustee and Corporate Services Directors, Josianne Cascun Montebello at jcascunmontebello@tridenttrust.com or Janice Copperstone at jcopperstone@tridenttrust.com.

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