

## Malta Trusts

The use of trusts by both legal and natural persons has gained popularity, particularly in Malta. It can be used for commercial or private purposes. The Maltese Trust may be used indiscriminately for international or local trusts due to the fact that the Trusts and Trustees Act makes no distinction between the two types of trusts.

A Maltese Trust may be established for a wide range of motives, such as providing a form of guarantee. The debtor, acting as the settlor to the trust may place any asset which is to be held under the trust for the benefit of his creditor, who would be acting as a beneficiary. This mechanism provides a more efficient, effective and non-time consuming form of guarantee than others such as pledge.

A Malta Trust may also be used as a vehicle in relation to real estate and the management of property. In this type of trust the settlor would be the owner of property together with the investor who would generally be the bank, where assets such as monies may be placed under the hands of the trustee with the purpose of administration or management of the property. This trust instrument is extremely useful when the property in question is still under construction or in the event that alterations are being made to it, since the trustee will be managing the cash flow in relation to the works taking place.

Securitisation of funds may also occur through a trust since monies may be allocated to the trust in order to invest such monies so as any creditor would have a guarantee of payment. The securitisation trust possesses similarities to an investment trust where the trustee places monies under investment as instructed by the settlor; this is usually done through a letter of wishes.

Amongst the above possibilities, a trust may be used as an instrument for the benefit of either the settlor himself or any other third party beneficiaries such as descendants, spouses, other relatives or any other person the settlor desires.

The Hague Convention on the Recognition and Enforcement of Trusts, was implemented into Maltese law through the Trusts and Trustees Act, thereby enabling Malta to recognise trusts whose proper law is not Maltese. This allowed Malta, which is largely a civil law country, to introduce trusts into its domestic legislation, thereby enabling residents and non-residents alike to set up various types of trusts in Malta.

Trusts are considered to be tax transparent and income attributable to a trust is not charged in the hands of the trustee if it is distributed to a beneficiary. Beneficiaries are subsequently charged to tax on income distributed by the trustees. When the income attributable to the trust is not distributed to beneficiaries this will be charged to tax in the hands of the trustee at the rate of 35%, but there will be access to the participation exemption where applicable and the non-resident beneficiary might be entitled to 6/7th tax refund on distribution thus resulting in a minimum tax leakage of 5%.



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On the other hand, if the trustee is tax resident in Malta and the trust derives the following types of income, the trust will be tax neutral or transparent in Malta:

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

No tax and duty implications will arise upon distribution if the trustees are not resident and the assets held on trust are located or registered outside Malta. The assets transferred must exclude Maltese immovable property and should not comprise of securities invested in Maltese companies for this to apply.

For more information on how TMF Group Malta can assist you with trusts, please email

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