

Maltese Trusts

Making the complex simple



The establishment and administration of trusts in or from Malta is regulated by the Trusts and Trustees Act. A trust may be created in any manner under Maltese law – orally, by unilateral declaration, by an instrument in writing including a will, by operation of the law or by a judicial decision.

The tax implications of a trust would be dependent on various factors, such as, the residence of the parties to the trust, the nature and location of the trust property and the various stages in the life of a trust (settlement of property on trust, administration of trust property, distribution of trust assets, reversion of trust property and the transfer of the beneficial interest in a trust).

Malta Tax Treatment

Although current legislation allows for Maltese residents to create and utilise local trusts for asset protection, for estate planning, as a commercial tool, for testamentary purposes or simply to ensure that assets are passed down from generation to generation, the creation and use of a local trust by Maltese residents for tax planning purposes will provide no fiscal benefit to such residents. Local tax authorities essentially adopt a “look through” approach and see through the trust and tax (or exempt from tax, as the case may be) any transaction or party to the trust in the same manner as they would have done in the absence of such a trust.

From an international perspective, however, Maltese trusts may provide certain tax planning opportunities to non residents, whilst also offering them the protection, security and estate planning benefits that come with the creation of trusts.

The settlement of foreign assets on trust by a non resident settlor for the benefit of non resident beneficiaries would not normally trigger off any Maltese tax implications. Under Maltese law, however, the general rule is that where at least one of the trustees of the trust is resident in Malta for tax purposes, then tax shall be payable in Malta on all income attributable to the trust. This would comprise the total income or gains chargeable to tax under Maltese law which accrue to or are derived by the trustee at any stage in the life of the trust as outlined above.

However, the inclusion in Malta’s tax legislation of a transparency model allows, in certain circumstances, for the tax authorities to look through the trust and tax the transaction (or exempt the transaction from tax, as the case may be), depending on the various factors that would attribute jurisdiction to tax to Malta or otherwise.

By way of example, in cases where all the income of a trust:

- arises outside Malta, or
- consists of interest, royalties, gains or profits on a disposal of shares or securities in a company the assets of which do not wholly or principally consist of immovable property in Malta;

and where all the beneficiaries of the trust are not persons ordinarily resident and domiciled in Malta or are persons whose income is totally exempt from tax under Maltese law, then the income shall not be deemed to be income attributable to the trust. Such income shall be deemed instead to have been derived directly by the beneficiaries.

“Check the box” provisions

Maltese law also provides for the possibility for a licensed trustee to irrevocably elect to have the trust treated as a company ordinarily resident and domiciled in Malta for tax purposes. This election is only possible where the trust has been established by instrument in writing and where the income attributable to the trust consists only of dividends, interest, royalties, capital gains and income from investments. Distributions effected by the trustees of such trusts to the beneficiaries would take the form of a dividend and be treated as such.

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