

MALTA TAXATION OF FOUNDATIONS

Malta Private Foundation Taxation

EU
Member of the EU & Eurozone

TIMEZONE
Central European Time Zone
(UTC+01:00)

CURRENCY
Euro €

WORKFORCE
Well qualified and multilingua

TAX SYSTEM
Flexible

NO WITHHOLDING TAX
On outbound dividends

SECTOR REGULATION
Authorized by Malta Financial
Services Authority

DOUBLE TAX TREATIES
Broad network of approx. 70 signed
DTTS





MALTA FOUNDATIONS

Foundations have been present in Maltese laws and practice for many years. Nevertheless, it is the recent revamping of the foundation laws that allowed Malta to take up the position of one of the leading foundation jurisdictions worldwide.

In terms of the Schedule of the Civil Code (Chapter 16 of the Laws of Malta), introduced in 2007, a Malta foundation is an organisation consisting of a universality of things constituted by one or more founders for fulfillment of a specified purpose (a 'purpose foundation') or for the benefit of a named person or a class of persons (a 'private foundation').

A Malta foundation has a separate legal personality, which makes it a powerful tool for asset protection. Although foundations may not engage in any commercial activity, they are allowed to hold investments or property (e.g. real estate, trademarks, yachts), as well as receive income derived therefrom (e.g. in the form of dividends, royalties or interest). Foundations may also be used, inter alia, as collective investment or securitisation vehicles.

Consequently, Malta foundations are often regarded as attractive alternatives to trusts, especially if they are used in structures involving jurisdictions that do not recognise trust laws. This is more so because foundations may also elect to be treated under applicable tax laws as trusts. This option combines the advantages of a separate legal personality and the possibility of applying Malta trust taxation rules.

PRIVATE FOUNDATION TAXATION

The main rules governing taxation of a Malta private foundation are provided in the Malta Income Tax Act and in the Foundations (Income Tax) Regulations.

The general rule is that a Malta private foundation is taxed in the same manner as a company that is ordinarily resident and domiciled in Malta. Nevertheless, the administrators of a foundation may irrevocably elect for the foundation to be taxed under the provisions applicable to trusts.

PRIVATE FOUNDATION TAXED AS A COMPANY

When treated as a company, a foundation would be taxed on its worldwide income less permissible deductions at the rate of 35%. A foundation would also be able to opt to benefit from the **participation exemption regime**.

Under the participation exemption rules, capital gains derived from the disposal of qualifying investments will not be subject to tax in Malta. Moreover, dividends received from such qualifying investment will be exempt from tax in Malta, subject to satisfying the anti-abuse rules prescribed by the Income Tax Act.

BENEFITS OF A MALTA FOUNDATION



Separate Legal
Personality



Asset Protection



Flexible Tax
Treatment



Reputable EU
Jurisdiction



PRIVATE FOUNDATION TAXED AS A TRUST

Where a private foundation opts to be treated as a trust and provided the conditions are satisfied, it may be considered to be transparent for Malta tax purposes. In such cases income would be deemed not to be attributed to the trust but directly to the beneficiaries. From a legal perspective, the income would still however be income of the foundation.

A trust would be 'tax transparent' where the following conditions are met cumulatively:

- (a) all the income attributable to a foundation consists of
 - (i) income arising outside Malta, and/or
 - (ii) interest, discount, premium or royalties or gains or profits arising from the disposal of units in a collective investment scheme or any units and such like instruments relating to linked long term business of insurance, or shares in a company which is not a property company, and/or
 - (iii) dividends distributed by one or more companies registered in Malta, out of the foreign income account and

- (b) all the beneficiaries of the foundation are persons who are not resident in Malta.

A foundation would still be regarded as tax transparent, where any of its beneficiaries are tax resident in Malta, provided that all the income attributable to a foundation consists of income listed in points (i) and/or (ii) above, and provided that all the beneficiaries of the foundation are not **domiciled in Malta**.

TAX REFUND MECHANISM

Regardless of the tax treatment which the foundation opts for, a foundation may be the shareholder of a Malta company and such shareholder, may claim the tax refund in the respect of tax paid at source by the distributing company on the share of dividends which have been distributed to it.

The amount of the refund will depend on the type and source of income received. In most cases the Foundation will be eligible to obtain a refund of 6/7ths of Malta tax paid at the company level. However, the refund will be limited to 5/7ths where distributions are paid out of passive interest or royalties received by the Malta company or to 2/3rds when distributed from foreign income in respect of which double taxation relief has been claimed.

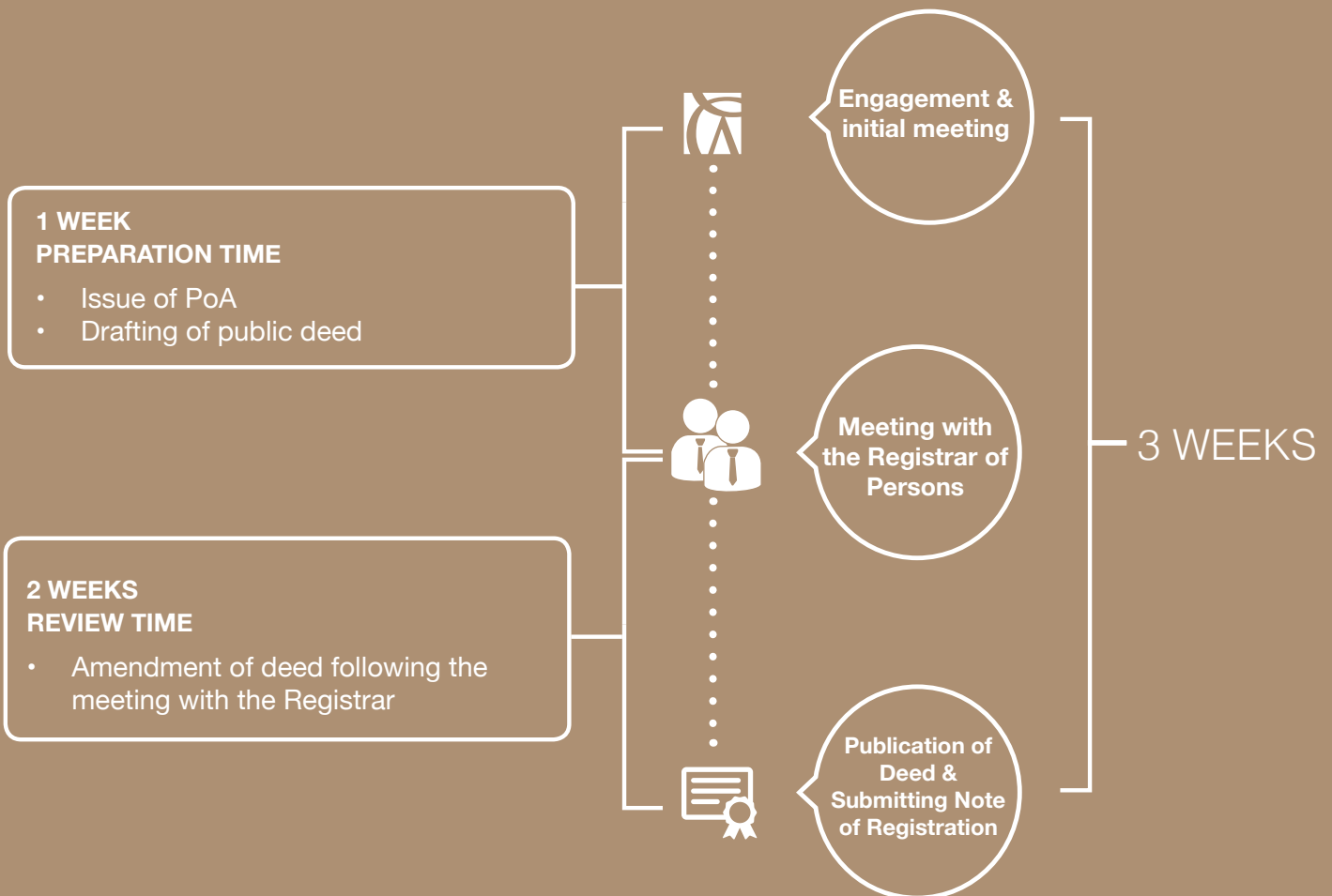


TAX TRANSPARENCY – COMMON SCENARIOS

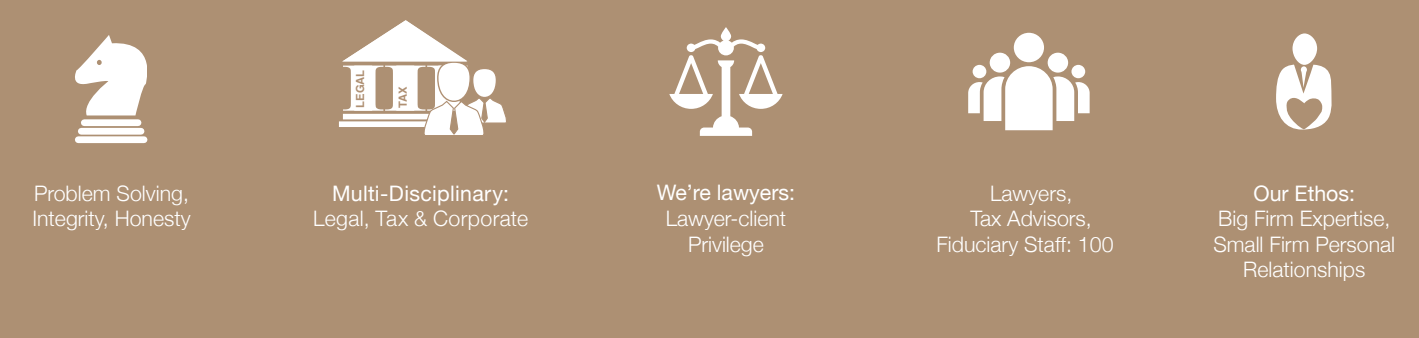


MALTA TAXATION OF FOUNDATIONS

Private Foundation Set up Timeline



WHY WORK WITH US?





CHETCUTI CAUCHI
ADVOCATES

Malta
Cyprus
London
Zürich
Hong Kong



Dr Jean-Philippe Chetcuti
Managing Partner,
Residency & Citizenship, Tax
jpc@cclex.com