

## Establishing a Trust in Malta and Why it can be so Beneficial

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By **Jonathan Vassallo**, 10th January 2023

### **Background: Malta Trusts**

With the Great Wealth Transfer currently taking place, a Trust is a vital tool when it comes to succession and estate planning. A Trust is defined as a binding obligation between a settlor and trustee or trustees. There is an agreement that stipulates the transfer of the legal ownership of property by the settlor to the trustees, for purposes of management and for the benefit of the nominated beneficiaries.

There are two types of Trust which are commonly utilised in Malta, depending on the specific needs of the individuals and desired purpose of the Trust:

- **Fixed Interest Trust** – the trustee has no control over the interest to be given to the beneficiaries. The Trust therefore defines the interest.
- **Discretionary Trust** – the more common type of Trust, where the trustee defines the interest issued to the beneficiaries.

### **Why are Trusts the Best Structure for Asset Preservation and Succession Planning?**

There are several reasons as to why Trusts are effective structures for asset protection and succession planning, including:

- To preserve and generate family wealth in a tax efficient manner, avoiding the division of the assets into smaller and less effective shares in each generation.
  
- The assets of the trust are segregated from the personal assets of the settlor hence, there is a further layer of protection against insolvency or bankruptcy.
  
- The settlor's creditors have no recourse against the property settled into the Trust.

When considering Maltese Trusts:

Malta is one, of a minority of jurisdictions, where the legal system provides for both Trusts and Foundations. A Trust can remain active for a period of up to 125 years from the establishment date, a duration which is documented in the Trust Instrument.

- Maltese Trusts can either be tax neutral, or be taxed as companies – income taxed at 35% and the beneficiaries will receive 6/7 refund on active income and 5/7 refund on passive income, as long as they are not resident in Malta.
  
- Lower Set Up Fees to establish a Trust in Malta. Significantly lower administration and set up costs are needed, compared to several other countries. Costs such as; audit fees, legal fees, and trust management fees are much lower in Malta, while the professional services provided, using a firm such as Dixcart, are of a high standard.

### **Key Parties to a Trust**

The comprehensive definition of a Trust recognises three elements, which are; the trustee, beneficiary, and the settlor. The trustee and beneficiary are defined as the key components of a Trust in Malta, while the settlor is the third party that establishes the property in a Trust.

**The Settlor** - The person who makes the Trust, and provides the trust property or the individual that makes a disposition from the Trust.

**The Trustee** - Legal or natural person, holding the property or to whom the property is bestowed within the terms of the trust.

**The Beneficiary** - The person, or persons, entitled to benefit under the Trust.

**The Protector** - Can be an additional party introduced by the settlor as one who holds a trustworthy position, such as a family associate, lawyer, or member. Their roles and powers may include, but not be limited to, acting as an investment advisor, having the ability to remove trustees at any time, and to appoint additional or new trustees to the trust.

### **Different Types of Trust in Malta**

Malta Trust Law provides for the different types of Trust, that can be found in most traditional trust jurisdictions, including the following:

- Charitable Trusts
- Spendthrift Trusts
- Discretionary Trusts
- Fixed Interest Trusts
- Unit Trusts
- Accumulation and Maintenance Trusts

### **Taxation of a Trust**

The taxation of income attributable to a Trust and all matters relating to taxation on the settlement, distribution and reversion of property settled in a Trust, are regulated by

the Income Tax Act (Chapter 123 Laws of Malta).

It is possible to elect for Trusts to be transparent for tax purposes, in the sense that income attributable to a trust is not charged to tax in the hands of the trustee, if it is distributed to a beneficiary. In addition, when all of the beneficiaries of a trust are not resident in Malta and when the income attributable to a Trust does not arise in Malta, there is no tax impact under Maltese tax law. Beneficiaries are charged to tax on income distributed by the trustees, in the jurisdiction where they are resident.

### **Dixcart as Trustees**

Dixcart has provided trustee and related trust services in; Cyprus, Guernsey, the Isle of Man, Malta, and Switzerland for over 35 years and has extensive experience in the formation and administration of trusts.

Dixcart Malta can provide trust services through its wholly owned group company Elise Trustees Limited, which is licensed to act as a trustee by the Malta Financial Services Authority.

### **Additional Information**

For additional information regarding Trusts in Malta and the advantages that they offer, speak to [Jonathan Vassallo](#) in the Malta office: [advice.malta@dixcart.com](mailto:advice.malta@dixcart.com)