

Formation of a Private Limited Company in Malta

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By **Jonathan Vassallo**, 12th March 2019

WHY USE MALTA?

The Republic of Malta is an archipelago consisting of the three inhabited islands of Malta, Gozo and Comino. The Maltese islands are situated in the middle of the Mediterranean Sea, about 100 km south of Italy.

Factors contributing to and enhancing the status of the jurisdiction include:

- Malta is a member of the EU and therefore has access to European Union Conventions.
- It is a Sovereign Independent State, enjoying political, economic and social stability.
- Malta has friendly relations with the majority of countries across the world through its policy of non-alignment.
- Companies operating in Malta are subject to a corporate tax rate of 35%. However, non-resident shareholders enjoy low effective rates of Maltese tax as Malta's full imputation system of taxation allows generous unilateral relief and tax refunds:
 - **Active income** – in most instances non-resident shareholders can apply for a tax refund of 6/7ths of the

tax paid by the company on the active profits used to pay a dividend. This results in an effective Maltese tax rate of 5% on active income.

- **Passive income** – in the case of passive interest and royalties, non-resident shareholders can apply for a tax refund of 5/7ths of the tax paid by the company on the passive income used to pay a dividend. This results in an effective Maltese tax rate of 10% on passive income.

- Holding companies – the dividends and capital gains derived from participating holdings are not subject to corporate tax in Malta.
- There is no withholding tax payable on dividends.
- Malta has an extensive network of Double Taxation Treaties (approximately 70 treaties).
- Advance tax rulings can be obtained. These relate to legislation currently in force in Malta. Advance tax rulings guarantee that if the basic legislation upon which the ruling was based changes adversely for the taxpayer, the terms of the ruling will survive for a further two years after the change in legislation. Advance tax rulings are given for a period of five years, renewable for a further five years.
- Malta offers an aircraft register and a combined ship and yacht register. Substantial tax saving opportunities are available.

FORMATION OF A MALTA PRIVATE LIMITED COMPANY

General information is detailed below, outlining the formation and regulation of Malta companies as embodied in the Companies Act 1995.

1. Incorporation

Incorporation normally takes between twenty four and forty eight hours from the time that the necessary documentation is presented to the Maltese Business Registry. Shelf companies are not available.

2. Authorised Share Capital

The minimum authorised share capital is €1,200. A minimum of 20% of the authorised share capital must be paid up. The share capital can be denominated in any currency.

3. Shares and Shareholders

Shares must be registered. The minimum number of shareholders for public and private companies in Malta is two, but a private limited liability company in Malta may also be formed as a single-member company. The sole shareholder and sole director of the Maltese Company cannot be corporate entities, and the objects clause is restricted to one main activity.

4. Fiduciary Shareholders (previously known as Nominee Shareholders)

These are permitted but must be authorised. Dixcart can provide fiduciary shareholders.

5. Registered Office

A registered office is required in Malta.

6. Directors

The minimum number of directors is one. Directors may be of any nationality and do not have to be resident in Malta. Companies wishing to take advantage of Malta's Double Taxation Treaties need to ensure that the company is managed and controlled from Malta.

7. Company Secretary

Every company must have a company secretary. The company secretary has to be an individual and cannot be a corporate entity.

8. Accounts and Year End

All companies have a year end of 31st December unless they elect for another date. Audited accounts must be presented to the members within ten months of the year end and filed with the Registrar forty two days after presentation to the members.

9. Taxation

Maltese companies pay tax at a rate of 35%. However, when a dividend is paid the non-resident shareholder is able to claim a refund. This refund equals 6/7ths of the Maltese tax paid on active profits from which the dividend distribution was made. Where profits emanate from passive income, this refund is reduced to 5/7ths. It is reduced further to 2/3rds where the dividend is distributed out of foreign source income and where the Maltese company paying the dividend has claimed double taxation relief.

The tax refund is increased to 100% where the profits from which the relevant dividend is distributed are derived by the Maltese company from a participating holding.

This means that the effective rate of tax in respect of dividends received from a participating holding is 0%, for dividends received from active income it is 5%, and for dividends emanating from passive income it is 10%.

10. Continuation of Companies

Maltese law allows companies to change their domicile in and out of Malta. Companies moving their domicile to Malta must come from a jurisdiction which allows this. This option enables companies to freely move from one jurisdiction to another without the need to go through a liquidation process. Companies wanting to move their domicile to Malta must submit certain documentation to the Registry of Companies. The Maltese Registrar then issues a provisional certificate and the certificate is converted into a 'Certificate of Continuation' on the presentation of evidence that the company has ceased to exist in the previous jurisdiction.

If you would like additional information regarding the formation of companies in Malta and the fees that Dixcart charge, please contact advice.malta@dixcart.com

Updated: January 2020