

Maltese Foundations and Potential Benefits When Re-Domiciling A Foreign Foundation To Malta

By **Jonathan Vassallo**, 15th July 2019

Malta private foundations have been used for asset protection and succession planning for several years. Amendments, at the end of 2018 to the 'Voluntary Organisations Act' enable foreign organisations, including private foundations, to be redomiciled to Malta.

Malta Foundations

Malta foundations are governed by the 'Civil Act' and the 'Voluntary Organisations Act' and are constituted as a legal entity. Under Maltese law, a foundation can be set up either as a private foundation or a purpose foundation, and can have any legal and lawful purpose, not only social or charitable.

The main difference between trusts and foundations is that in the case of a trust the settlor settles assets to a trustee to hold for the benefit of the beneficiaries, a foundation entails the creation of an entity with separate legal personality distinct from founders, administrators and beneficiaries.

What are the Potential Tax Advantages in Relation to a Malta Foundation?

Malta foundations can; either be treated as a company which is resident and domiciled in Malta and will therefore benefit from the full imputation system of taxation, OR the administrators may irrevocably elect for the foundation to be treated as a trust for tax purposes.

Election to be treated as a trust gives rise to beneficial private asset planning opportunities, in particular, when the Founder and beneficiaries are not resident and/or domiciled in Malta:

- In these circumstances no tax or duty is payable in Malta upon settlement, or in relation to the income of the foundation.

Re-domiciliation of Foreign Foundations to Malta

◦ The Process

A foundation formed and incorporated or registered under the laws of a state within the European Union or the European Economic Area, with legislation which is similar in nature to Maltese legislation, can be redomiciled to Malta.

If a foreign foundation is governed by a law which does not provide for continuation, such a foundation may be redomiciled to Malta, if authorised to do so by its instrument of constitution or statute and having filed a request to the Malta Registrar to register as being 'continued' in Malta.

Continuation rules can also be applied to foundations incorporated or registered under the laws of other countries, if the Maltese Minister of Justice approves this action by 'notice' in relation to a specific country. Such a decision is likely to be reviewed from time to time.

◦ Registering in Malta

When applying to register in Malta, the foreign foundation needs to register in the same 'legal form' that it had under the law of the preceding foreign country. In the event, that a similar 'legal form' does not exist under Maltese law, a 'legal form' as close as possible needs to be selected and designated.

Continuation, in Malta, of a foreign foundation requires the adoption of Maltese law to govern the statute from the time of registration. Compliance with all matters relevant to the specific legal form of foundation is required as well as compliance with any other applicable law relating to the foundation's activities or administration.

◦ Re-domiciliation out of Malta

A Malta foundation may re-domicile to continue in any state within the European Union or the European Economic Area, as long as it is authorised to do so by its instrument of constitution or statute. After the relevant procedures have been followed, the Registrar will terminate the registration of the foundation in Malta.

The Advantages of ‘Continuation’ of a Foundation – Permitted under Maltese Law

Up until the end of 2018, the only way to re-domicile a foundation from a foreign country to Malta was for the foreign foundation to establish a Malta foundation, appoint its assets to it and unwind the pre-existing foundation.

- Malta foundation re-domiciliation rules, introduced on 6 November 2018, allow for an existing foundation to continue under Maltese law. This can avoid adverse tax consequences in relation to the deemed liquidation of the foreign foundation, the distribution of all of its assets to the beneficiaries, and the subsequent establishment of the new Malta foundation.

Additional Information

If you would like any further information on this subject, please contact the Dixcart office in Malta: advice.malta@dixcart.com or your usual Dixcart contact.