

Maltese Foundations: What Are Their Advantages and Distinct Characteristics?

Foundations have been described as the civil law alternative to trusts. We can assist in the establishment and management of a foundation.

By **Jonathan Vassallo**, 23rd June 2020

Background

In 2007, Malta enacted specific legislation regarding foundations. Subsequent legislation was introduced, regulating the taxation of foundations, and this further enhances Malta as a jurisdiction for international private asset planning.

Foundations have been described as the civil law alternative to trusts.

There are three types of foundations in Malta:

- *Private*
foundations are established for the benefit of a beneficiary or group of beneficiaries.

- *Charitable*
foundations are public benefit foundations exclusively promoting a social or public purpose on a non-profit making basis.

- *Purpose*

foundations are established

for a purpose, without beneficiaries and generally have a philanthropic objective,

although they can be established with a private purpose.

Why Establish a Foundation?

There are numerous reasons why a foundation may be of benefit, which apply to a private foundation established in Malta:

- *Confidentiality*: the foundation deed states the foundation's name, its registered address, a description of the initial endowment with which it was formed, and its purposes and objects.
- *Asset protection*: if a home country is not politically or economically stable, a foundation can be established overseas and assets transferred into it (professional advice should always be taken in the home country, prior to any transfer taking place).
- *Securitisation vehicle*: Maltese law allows for the use of a foundation in place of a trust, as an appropriate vehicle for the securitisation of debt.
- *Succession planning*: a foundation can generate a greater degree of privacy and flexibility than may be possible with a will alone. Foundations can be used to avoid the separation of family estates and to prevent disputes between heirs.
- *Spendthrift beneficiaries*: foundations can be created to prevent reckless heirs from spending family wealth on the death of their parents, by

limiting their interest to income or to capital (at least until they reach a certain age, or until they fulfil certain requirements). Foundations can be drafted in such a way that a beneficiary is 'excluded', if they are, for example, declared bankrupt.

- *A solution for the care of individuals with special needs and minors:* a foundation can be used to make special provisions for beneficiaries who will be unable to care for themselves on the death of the founder, and in situations where it may be appropriate that one heir should benefit more on the death of the founder, as they require a greater amount of care, with its associated costs.

- *Lifestyle planning:* partners who are not married, or whose family arrangements are not straight-forward may find that some countries' legal systems do not provide adequate solutions on their death or separation. In such cases a specifically drafted foundation can be used to ensure that partners, and children of such partners, are treated as the founder intends.

Characteristics of Maltese Foundations

- Maltese private foundations are regulated by the 'Second Schedule to the Civil Code of the Laws of Malta'. New legislation introduced a registration procedure, which has been designed in a way to safeguard the privacy of Maltese private foundations.

- A foundation can only be constituted by virtue of a *public deed 'inter vivos,'* drawn up by a notary public or by means of a will. Once the foundation is constituted, it is registered with the Malta Registrar of Legal Persons.

- A private foundation is limited to a maximum period of 100 years.

- An interesting feature of a Maltese foundation is that segregated cells can be established within a foundation to achieve particular purposes with particular assets. The segregated cell does not have separate legal personality; however the assets and liabilities of the cell are ring-fenced from other assets and liabilities of the foundation and/or other cells.

- In terms of Maltese legislation, it is possible to re-domicile a foundation into and out of Malta.

- A foundation may be terminated at any time if all of the beneficiaries agree, provided they are all alive, none have been convicted of a crime or are minors. If the founder is still alive his consent would also be required. Termination obligations must be included in the deed.

Maltese Foundations: A Choice to be Taxed In One of Two Ways

- A foundation can either be treated as a company, which is both resident and domiciled in Malta,
OR as a trust.

Taxation as a Trust

A Maltese foundation can irrevocably elect that the foundation be treated as a trust, for tax purposes.

An election to be treated as a trust gives rise to beneficial private asset planning opportunities, particularly where the founder and beneficiaries are not resident and/or domiciled in Malta. In such a situation no tax and/or duty will be payable in Malta. This applies on settlement and in relation to the income, attributable to the foundation.

Taxation as a Company

If a Maltese foundation decides to be taxed as a company, as with other companies in Malta, the income and/or gains realised are subject to tax in Malta on a worldwide basis at the flat rate of 35%.

However, on the distribution of qualifying foreign or local source income, by the foundation in favour of its beneficiaries, the beneficiaries will generally be entitled to a refund of 6/7ths of the Malta tax paid by the foundation, giving an effective tax rate of 5%. This assumes that the beneficiaries are not resident and/or domiciled in Malta.

A number of reliefs are also available to foundations, as well as to companies – amongst these are; the full imputation system, participation exemption, and access to appropriate unilateral agreements, Malta also has wide network of Double Tax Treaties.

How Can Dixcart Assist?

The Dixcart office in Malta can assist in the establishment and management of a foundation in an efficient manner and to meet the agreed objects of the foundation.

Additional Information

For further information about Maltese foundations and the benefits that they offer, please speak to Jonathan Vassallo: advice.malta@dixcart.com at the Dixcart office in Malta. Alternatively, please speak to your usual Dixcart contact.