

## KEY FACTS FOUNDATIONS

THE PRINCIPAL LEGISLATION REGULATING FOUNDATIONS IN MALTA IS ACT XIII OF 2007. FOUNDATIONS CAN BE SET UP AS EITHER 'PRIVATE FOUNDATIONS' OR 'PURPOSE FOUNDATIONS'.

A foundation set up as a patrimony that is constituted by the founder with the assets being destined to fulfil a scope for the benefit of a named person or class of persons is a private foundation, whereas a foundation established for the fulfilment of a specified purpose (charitable, philanthropic or other social purpose) is referred to as a purpose foundation.

### PRINCIPAL FEATURES

- > A foundation may be constituted by virtue of a public deed or by a will. A public deed is published by a public notary and is registered at the Public Registry.
- > Assets settled into a foundation must amount to at least EUR1,165.
- > The beneficiaries of a foundation must be named. However, as an alternative to naming the beneficiaries in the deed of foundation, the founder may list the beneficiaries in a written instrument outside the deed, such instrument, called the beneficiary statement, must be signed by the founder and be authenticated by a notary public.
- > The deed of foundation must contain the following information:
  - > the name of the foundation, which must include the word "foundation";
  - > the registered address in Malta;
  - > the purpose or objects of the foundation;
  - > the assets with which it is formed;
  - > the composition of the board of administration and the names of the first administrators, and if not yet appointed, the procedure for their appointment;
  - > the foundation's legal representation;
  - > the term for which the foundation is established, if any; and
  - > should all the administrators to a foundation be non-Maltese resident persons, the name and address of a Maltese resident person appointed to act as a local representative.
- > Foundations need to be registered with the Registrar of Legal Persons by the designated administrator. Registration provides the foundation with a separate legal personality.
- > Confidentiality – registration records are private and the Registrar of Legal Persons is obliged to implement procedures to ensure the privacy of private foundations, subject to the right of access of persons having a legitimate interest in the records. Even court proceedings are confidential and must be held in camera, i.e., only the parties to the proceedings are allowed in court.
- > A founder can also appoint a supervisory council, which is empowered to supervise the actions of the administrators to the foundation. The founder can also act as an administrator, provided this is specifically provided for in the foundation deed.
- > A foundation cannot be established to trade or carry on commercial activities with the following notable exceptions:
  - > a foundation can be endowed with commercial property or a shareholding in a profit making enterprise, a franchise, a trademark or other asset which gives rise to income as well as a ship as long as it remains a passive owner of such assets;
  - > a foundation may be used as a collective investment vehicle for the passive holding of a common pool of assets, the management of which is delegated to a third party; and
  - > a foundation may be used as a securitisation vehicle.
- > In a private foundation the administrators owe fiduciary obligations to the beneficiaries and the latter therefore enjoy legally enforceable rights against the foundation arising out of their entitlement.

## USES OF MALTA FOUNDATIONS

- > To act as a holding, investment or securitisation vehicle
- > An alternative to a trust in dealing with succession, inheritance planning and wealth preservation
- > Asset protection

## TAXATION OF MALTA FOUNDATIONS

- > A foundation may either be treated as a company which is both resident and domiciled in Malta or the administrators may by notice in writing to the Commissioner of Inland Revenue irrevocably elect that the foundation be treated as a trust for tax purposes.
- > Election of treatment as a company means that the foundation can benefit from features of Maltese taxation applicable to companies including the participation exemption in respect of participating holdings<sup>1</sup>, eligibility for tax refunds and other tax reliefs arising from Malta's extensive double taxation treaties.
- > The election to be treated as a trust gives rise to very beneficial private asset planning opportunities particularly where the founder and beneficiaries are not resident and domiciled in Malta, in which case no tax and duty will be payable in Malta upon settlement or on the income attributable to the foundation. In this instance, the foundation as in the case of a Maltese trust, benefits from look-through provisions contained in the applicable tax law.

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<sup>1</sup> Income or capital gains derived by a Malta company from a non-Maltese holding qualifying as a participating holding (generally a 5% equity holding or partnership interest or alternative tests) are exempt from tax, subject to certain anti-abuse provisions being satisfied (in the case of dividends only). In this instance therefore the income or capital gains generated by the Malta company through the participating holding has a 0% Malta tax burden.

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