



# ICLG

The International Comparative Legal Guide to:

## Private Client 2016

**5th Edition**

A practical cross-border insight into private client work

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## EDITORIAL

Welcome to the fifth edition of *The International Comparative Legal Guide to: Private Client*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work.

It is divided into two main sections:

Eight general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 29 jurisdictions.

All chapters are written by leading private client lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jonathan Conder and Robin Vos of Macfarlanes LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

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## 1 Pre-entry Tax Planning

### 1.1 In your jurisdiction, what pre-entry estate and gift tax planning can be undertaken?

There are no estate or gift taxes applicable in Malta. When a person is interested in becoming a Malta resident non-domiciliary then no taxes are payable on the capital that is brought into the country. Malta resident non-doms only pay taxes on the income that arises in Malta and income that arises abroad but is remitted to Malta.

### 1.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Income tax in Malta is levied in accordance with the type of residence that one takes up. Persons who are ordinarily resident, but not domiciled in Malta may choose to apply to become beneficiaries of special tax status in terms of 'The Residence Programme Rules' (in the case of EU, EEA and Swiss Nationals), and the Malta 'Global Residence Programme Rules' (applicable for Non-EU Nationals). Such beneficiaries would be entitled to a flat rate of 15%, instead of the progressive tax rates ranging from 0 to 35%, on income arising outside of Malta which is received in Malta, provided that some criteria are adhered to. EU nationals can also choose to become residents under the ordinary residence rules where the progressive tax rates would apply.

Since Malta operates a remittance basis of taxation as explained under question 1.1, planning for income tax purposes can take place whether pre-entry or not. The separation between capital and income is important in order that remitted funds can be clearly identified as capital or income.

### 1.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

There are no other relevant taxes for pre-entry planning.

## 2 Connection Factors

### 2.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

The domicile of a person is very relevant in determining whether

a person is taxable in Malta or not. Malta domicile and residence determine whether a person is taxable in Malta and in what manner. A person who is both domiciled and resident in Malta would be taxable on a worldwide basis, whilst if either domicile or residence is missing, then the remittance basis of taxation applies.

### 2.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

The term domicile is not defined under the Maltese Income Tax Acts but the local Inland Revenue Department considers an individual's domicile to be the territorial unit that regulates such things as marriage, succession and legal capacity. Domicile is considered to be the place of incorporation or principal seat of registration in the case of a body of persons.

Malta applies specific international law guidelines in relation to domicile, which include that a domicile is acquired by birth. This is referred to as 'domicile of origin'. Every person must have a domicile and no person can have more than one.

A person may opt to have a domicile of choice, however, this is quite hard to acquire.

Malta also follows the rules of the 'Doctrine of Revival' in circumstances when there is doubt of where the person is domiciled.

### 2.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

The residence of a person is very relevant in determining whether a person is taxable in Malta or not, and in what manner. A person who is both domiciled and resident in Malta would be taxable on a worldwide basis, whilst if either domicile or residence is missing, then the remittance basis of taxation applies.

### 2.4 If residence is relevant, how is it defined for taxation purposes?

In Malta, the term 'residence' is not clearly defined in the Income Tax Acts.

However, parts of the Income Tax Acts help us determine who is considered to be a Malta tax resident.

A person is considered tax resident in Malta at law if he is not a temporary resident (as defined under Article 13 of the Malta Income Tax Act) and has showed an intention to remain permanently or has actually resided in Malta for 183 days.

Article 13 defines what a “temporary resident” is and exempts from tax those persons who are in Malta for a temporary period and who have no intention to stay in Malta. These persons would stay in Malta for less than 183 days (six months) – the temporary period.

### 2.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

Maltese nationality is not a relevant factor in the determination of liability to tax.

### 2.6 If nationality is relevant, how is it defined for taxation purposes?

This is not applicable.

### 2.7 What other connecting factors (if any) are relevant in determining a person’s liability to tax in your jurisdiction?

Another connecting factor is the source of the income. Any income arising in Malta would be taxable in Malta even where the recipient is not resident or domiciled in Malta.

## 3 General Taxation Regime

### 3.1 What gift or estate taxes apply that are relevant to persons becoming established in your jurisdiction?

There are no gift or estate taxes in Malta.

### 3.2 How and to what extent are persons who become established in your jurisdiction liable to income tax?

If a person establishes his residence in Malta but is not domiciled in Malta, then the remittance basis of taxation is applied. This means that such person is liable to tax on:

- income and taxable capital gains arising in Malta (e.g. on local bank interest; employment income; and a gain made on the transfer of immovable property situated in Malta); and
- foreign source income which is received in Malta (e.g. on foreign investment income paid directly into a Maltese bank account or which, although not paid directly into Malta, is remitted to Malta).

### 3.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

Other direct taxes that may apply are: Maltese stamp duty, on the purchase of immovable property in Malta (ranging from 3.5% to 5%); and final withholding tax, on the sale of immovable property. New budget provisions provide that from 1 January 2015, the final tax on transfers of immovable property acquired after 1 January 2004 will be reduced from 12% to 8% of the transfer value, while the rate in respect of transfers of immovable property acquired before 1 January 2004 will be of 10%. One should also give due regard to the fact that it will no longer be possible to opt out of the final tax system and therefore to be taxed on the profit. Furthermore, no deduction of expenses will be allowed when one seeks to arrive at the transfer value.

A very important exemption from property tax also lies in Art 5A (4) (c) of the Maltese Income Tax Act, which provides that the transfer of own residence, or part thereof, is exempt from tax.

At the option of the recipient, a 15% withholding tax may be opted for in case of certain investment income. Otherwise such income would need to be computed within the relevant income tax return.

### 3.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

In Malta, VAT is charged at a standard rate of 18% with a special reduced rate of 5% in respect of certain supplies. The latter include the supply of electricity, certain confectionery items, certain medical accessories, printed matter, the importation of certain items for the exclusive use of the disabled, domestic care services, works of art, collectors’ items and antiques, certain labour-intensive services and admission to museums, art exhibitions, concerts and theatres. The supply of accommodation in hotels and holiday premises is also subject to a reduced rate of 7%. Reduced rates would also apply through the Malta VAT yacht leasing arrangement and the Malta aircraft leasing arrangement.

Customs duties are payable for non-EU imports, however, an exemption on duty applies to importation of household and personal effects on the transfer of a person’s residence to Malta, if such importation is finalised within six months from initial residence.

Excise duty applies to alcohol and alcoholic beverages, manufactured tobacco and mineral oils.

### 3.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

Malta does not have wide-ranging anti-abuse provisions, however, the rules under question 3.6 could apply in certain circumstance.

### 3.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

The Malta Income Tax Act includes general anti-avoidance provisions in Article 51, which provides that the Director General (Inland Revenue), for tax purposes, may disregard any artificial, fictitious or abandoned scheme that reduces the amount of tax payable by a taxpayer. Furthermore, where a tax payer takes benefit of a tax scheme for the sole or main purpose of avoiding, reducing, postponing or obtaining a tax refund which otherwise wouldn’t apply, the Director General (Inland Revenue) may determine the liability to tax or entitlement to refund in such a manner or such amount as may be necessary in order to nullify or modify the advantage or scheme and consequent advantage.

## 4 Taxation Issues on Inward Investment

### 4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

There is no tax liability on the acquisition or on the simple holding of investments in Malta. However, Stamp duty is generally payable on the acquisition of shares in Malta companies, unless an exemption (i.e. non-resident ownership or non-Malta activities) is issued in this regard.

Capital gains tax is due on the disposal of assets and this is calculated in the same manner as income tax and depending on the individual's personal progressive tax rates. Non-resident shareholders disposing of shares in Malta companies are exempt from capital gains tax in Malta by means of a specific provision in the Income Tax Act.

Malta taxpayers in receipt of a dividend from a Malta company, debenture interest payable to a debenture holder or interest on any other loan payable to a creditor, are eligible to receive a credit of the Malta tax paid at source on the income out of which the dividend or interest is being distributed by operation of the full imputation tax system. Should the taxpayer's personal marginal tax rate be lower than the 35% income tax suffered at the level of the company, a refund of the excess tax paid is due to the shareholder.

#### 4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

In Malta, customs duties apply on importation of items from outside the EU. An exemption on duty applies to the importation of personal and household effects on the transfer of a person's residence to Malta, if such importation is finalised within six months from initial residence.

#### 4.3 Are there any particular tax issues in relation to the purchase of residential properties?

There is no specific property purchase tax in Malta or an annual property tax, however, stamp duty tax is payable on the purchase of immovable property. The applicable stamp duty is that of 3.5% up to the value of EUR 150,000 on the first residence in Malta and 5% thereafter. There is also a full exemption until December 2016 if the individual is buying his first property anywhere in the world.

### 5 Taxation of Corporate Vehicles

#### 5.1 What is the test for a corporation to be taxable in your jurisdiction?

Malta-registered companies are taxable in Malta by virtue of their incorporation regardless of where their management and control is exercised, whereas overseas companies would be taxable in Malta if their management and control is exercised in Malta.

#### 5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

The main tax liabilities payable by a Malta company would be income tax, capital gains tax, stamp duty and VAT.

#### 5.3 How are branches of foreign corporations taxed in your jurisdiction?

The Malta branch of a foreign company is deemed to be an extension of a non-resident entity for tax purposes and is therefore subject to tax in Malta at the corporate income tax rate of 35% only on Malta-sourced income and capital gains. The chargeable income is computed in the same manner as that of a Malta registered company. Branches are thus permitted to take the same deductions in computing their taxable income. Profits from branch activities may be allocated to the various tax accounts in a similar way to local

companies and distributions therefrom also give the shareholder a right to claim a tax refund.

### 6 Tax Treaties

#### 6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Malta has entered into approximately 70 double taxation agreements and the list is always increasing. Their impact is very positive in that they encourage the growth of trade between two countries and remove the incidence of double taxation and reduce withholding taxes for payments from one country to another.

#### 6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

Malta's treaties generally follow the OECD Model. Of particular importance as well is Malta's OECD positive peer review for its tax framework.

#### 6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

This is not applicable.

#### 6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

This is not applicable.

### 7 Succession Planning

#### 7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

In Malta, the main legislation on succession and wills is Chapter 16 of the Maltese Civil Code, which regulates the essential validity and formal validity of wills. The only conflict of law rule on succession and wills within the Civil Code is Article 682, which specifies that wills made outside Malta, shall have effect in Malta only if such are made in the form prescribed by the law of the place in which the will is made.

Under the Civil Code, the law enables any person who does not have any legal disability to dispose of his property, whether in whole or in part. There are two types of wills, namely, public or secret. In the case of spouses, the law enables them to have a joint will, known as, will *unica charta*. Public wills must be received and published by a notary public in the presence of two witnesses, whose signature is always required. In the case of secret wills, these may be printed, type-written or written in ink either by the testator himself or by a third person and shall be delivered to the registrar of the court of voluntary jurisdiction.

With respect to rules on the essential validity of wills, the law, in addition to the capacity of the testator, further imposes rules in relation to the persons designated as beneficiaries. For instance, persons who, at the time of the testator's death, were not yet conceived are incapable of receiving by will. The law also imposes

rules on which property may be disposed of by will. This is known as the 'reserved portion', which refers to the right of the descendants and the surviving spouse of the deceased to have a specific portion reserved by law in their favour. A testator would therefore be restricted to dispose freely of all his property.

## 7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

Real estate, under Maltese law, is referred to as immovable property and any other right attached to immovable property. A cardinal rule applicable to immovable property held in Malta is that any transfer must, under the pain of nullity, take place by means of a public deed, whether this is by transfer *inter vivos* or *causa mortis*.

In the case that a testator wishes to bequeath an immovable property to a person other than by means of a will, whether to a person who is an heir or to a legatee (provided that the rules on reserved portion have been adhered to), the owner of the property may choose to grant the property by donation so long as the donation is made by means of a public deed.

The First Hall, Civil Court is the competent court in case a dispute arises from or in relation to an immovable property.

## 8 Trusts and Foundations

### 8.1 Are trusts recognised in your jurisdiction?

The Trusts and Trustees Act (TTA) (Chapter 331 of the Laws of Malta), recognises the institute of Malta trusts and regulates trusts and the conduct of Malta trustees. It also provides that the Malta Financial Services Authority is the sole regulatory body. The TTA encompasses useful definitions such as 'beneficiary', 'settlor', 'trustee' and 'breach of trust', and also regulates matters such as the validity and recognition of trusts.

### 8.2 How are trusts taxed in your jurisdiction?

Taxation of Malta trusts is mainly regulated by Chapter 123 of the Laws of Malta; the Malta Income Tax Act; Chapter 372, the Income Tax Management Act; and Chapter 364, Duty on Documents and Transfers Act. Income that accrues to a Malta trust is chargeable to tax under the Malta Income Tax Act where at least one of the trustees of that trust is resident in Malta for tax purposes. This approach is then softened by the application of the transparency rule, which makes a trust transparent for tax purposes. In such cases income otherwise attributable to a trust would be deemed to have been automatically derived directly by the beneficiaries of that trust. Where all of the trust's income is mainly income arising outside of Malta and all the beneficiaries are neither ordinarily resident nor domiciled in Malta then the trust remains tax neutral in Malta.

On the other hand, where it is decided that the trust be treated as a Malta company, then a tax rate of 35% is payable on the income with the possibility of a 6/7ths tax refund on distributions for non-resident beneficiaries (leading to a maximum 5% effective tax rate). The trust would also be entitled to apply the participation exemption regime.

### 8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

Malta is a jurisdiction which provides the right of the reserved portion as a right of the descendants and the surviving spouse over

the whole estate of the deceased. The share varies in accordance with the circumstances imposed within the law on succession within the Civil Code. As a result, any assets which have been donated or disposed of by will or settled in a trust by the deceased will not be affected by any of the forced heirship rules so long as the right of any descendants and/or the surviving spouse to the reserved portion over the non-disposable portion is not prejudiced.

Where the settlor is not domiciled in Malta at the time at which he settles the property on trust, the mandatory rules within the Civil Code on forced heirship do not apply. This is also the case where the settlor eventually becomes domiciled in Malta on the basis that the law of the settlor's domicile at the time of settlement would preclude the application of Maltese succession law on the reserved portion.

### 8.4 Are foundations recognised in your jurisdiction?

The institute of foundations is recognised in Malta through Chapter 16 of the Laws of Malta, the Civil Code under the Second Schedule entitled Legal Persons. Foundations in Malta are used both for private and charitable purposes and they are engrained in the Maltese legal system. There is a wealth of jurisprudence dealing with foundation issues.

### 8.5 How are foundations taxed in your jurisdiction?

Maltese foundations may choose to be taxed either as companies or as trusts.

In the case that a foundation is treated and taxed as a company, then it will be subject to a tax rate of 35% as applicable with respect to companies ordinarily resident and domiciled in Malta. Therefore, the same exemptions applicable for companies would be equally applicable. This means that any distributions made by the foundation will be treated as dividends as in the case of shareholders of a company. Beneficiaries of a foundation may, therefore, be entitled to claim tax refunds bringing down the net effective tax rate of 5%. For instance, where qualifying to benefit, transfers of a beneficial interest may be treated as exempt security transfers.

In the case that a foundation is treated and taxed as a trust then the tax treatment mentioned above under question 6.2 will apply.

### 8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

Similar principles to those outlined under question 6.3 with respect to trusts apply with respect to foundations.

## 9 Matrimonial Issues

### 9.1 Are civil partnerships/same sex marriages permitted/recognised in your jurisdiction?

Malta permits and recognises civil unions by means of the Civil Unions Act (Chapter 530 of the Laws of Malta) recently adopted on the 14 April 2014. Registration of a civil union is permissible between two persons of the same or of different sex, hence, allowing same sex civil unions. The first civil union was constituted on the 13 June 2014. 47 civil unions were registered within a year from the introduction of the act.

The act grants civil unions the same rights and obligations as those afforded by the Marriage Act (Chapter 255 of the Laws of Malta) to

heterosexual marriages in Malta. It also includes the right of joint adoption.

A civil union which is contracted between persons either of whom is bound by a previous marriage, civil union or by another union of equivalent legal status contracted outside Malta, is void.

The Civil Unions Act recognises marriages or unions of equivalent status celebrated abroad by two persons of the same-sex provided that (i) the formalities required for its validity by the law of the country where the marriage/union of equivalent status is celebrated are observed, and (ii) the parties are capable of entering into such in accordance to the law of the country of their respective domicile.

## 9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

The matrimonial regimes regulating the property of spouses during marriage, are the following:

- (i) community of acquests;
- (ii) separation of estates; and
- (iii) community of residue under separate administration (CORSA).

The community of acquests regime, being the most common regime, provides for one common fund which encompasses generally all income and earnings accrued during marriage by both spouses including property and assets acquired with moneys or other things derived from the acquests. All income, earnings, property and assets belong to both spouses equally. Generally, administration vests in either of the spouses for ordinary acts of administration and in both spouses for extraordinary acts of administration.

Separation of estates implies that the income, earnings, property and assets which are accrued during marriage remain paraphernal property, belonging exclusively to the spouse who acquired them. The other spouse does not have any legal right over such property.

CORSA, which is not that popular compared to the other two regimes, provides that spouses administer their income, earnings, property and assets accrued during marriage and part of the community of residue as separate estates. Upon the dissolution of marriage, however, any residue thereupon belongs to both of the spouses equally.

## 9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Maltese law provides for the possibility of spouses choosing which matrimonial regime applies to their marriage before or after the celebration of marriage.

Marriage celebrated in Malta produces *ipso jure* between the spouses the community of acquests unless the spouses decide otherwise by agreement. The couple may prior to marriage enter into a pre-nuptial agreement being a public deed, before a notary, in which they expressly declare to exclude the community of acquests in favour of one of the other two regimes.

Spouses also have the option to change their matrimonial regime after celebrating their marriage. Again, as in the case of pre-nuptial agreements, the renunciation of one regime in favour of another must be undertaken by public deed, before a notary. For any change occurring after the celebration of marriage, however, the spouses must, before entering into the relative deed, obtain authorisation from the Court of Voluntary Jurisdiction.

In case of couples, who celebrated their marriage outside Malta and subsequently established themselves in Malta, the community

of acquests applies with regard to any property/assets acquired by such couple after their arrival, in the absence of an agreement to the contrary by public deed.

## 9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

The introduction of divorce in Malta in 2011 brought about the application of new legal provisions enacted to regulate the implications of divorce, including financial provisions.

Amongst the requirements laid down by law for divorce to be granted is the confirmation by the court that adequate maintenance is being given to the spouses and children, where this is due, and in accordance with their particular circumstances. The law further lays down what these circumstances are, namely, the means of the spouses, their ability to work, their needs and all the other circumstances of the spouses and of the children (Article 54(2) Civil Code, Chapter 16 of the Laws of Malta).

When the amount of maintenance is decided or otherwise agreed to between the spouses in a contract of separation, such amount is deemed to be adequate maintenance.

Moreover, the law provides that the person entrusted with the care of the minor children maintains the right to watch over their maintenance and education, and is still bound to contribute thereto, according to law.

In the course of the initiation of divorce proceedings, upon the receipt of a request for divorce, prior to granting the necessary approval for the spouses to proceed with divorce, the Civil Court encourages the spouses to enter into an agreement which would outline the terms of the divorce, namely: (a) the care and the custody of the children; (b) the access of the two parties to the children; (c) the maintenance of the spouses or of one of them and of each child; (d) residence in the matrimonial home; and (e) the division of the community of acquests or the community of residue under separate administration. The court may in particular, order the parties to present information about the payment of children's maintenance.

For the purpose of safeguarding the rights of the more vulnerable party in the course of divorce proceedings, the law now provides for a revolutionary provision which states that the court, on the request of the party that is to receive maintenance, may order that the spouse who is obliged to pay maintenance will also have the duty to provide an appropriate and reasonable guarantee, for the purpose of safeguarding the payment of maintenance. Such guarantee is limited to the amount of maintenance due for five years. Such guarantee is particularly ordered by the court where it is found that during the hearing or prior to the initiation of proceedings, the party due to pay maintenance failed to honour his/her obligation to pay maintenance to the detriment of the other spouse, or where there are serious objective circumstances which demonstrate the necessity of the said guarantee.

In the event that the party who was receiving maintenance as stated above, marries a third party or starts a new relationship, that party loses her/his right to receive maintenance payable by the former spouse with effect from the date of the new marriage or of the commencement of the relationship. In this case, it is assumed that the new marriage or relationship gives rise to a new obligation to maintenance. This also applies notwithstanding the fact that a separation contract between the parties exists and contains a provision whereby the obligation of maintenance subsists even though the party receiving maintenance remarries or starts a new relationship. This, however, does not apply in the case where a lump sum was given as maintenance in favour of the party who contracts a new marriage or starts a new relationship. Therefore, in such circumstances, no refund is due.

Notwithstanding all of the above, the spouses may, at any time, renounce their right to maintenance. This does not apply to the children, in whose favour maintenance may not be renounced.

In the event that the spouse bound to provide for the maintenance of the children defaults, criminal proceedings may be instituted against said spouse.

Maintenance towards children is legally due till eighteen years of age. The age may, however, be extended to twenty-three years, in the case where children are in full-time education.

## 10 Immigration Issues

### 10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Admission into Malta, through its external border, is only permitted to third country nationals who seek entry through a border crossing point and are in possession of a valid passport or equivalent recognised travel document permitting them to cross the border and are in possession of documents substantiating the purpose and the conditions of the planned visit and have sufficient means of support, both for the period of the planned visit and to return to their country of origin. A third country national who already holds a residence permit issued by one of the Schengen Member States is exempted from this requirement.

Persons who are restricted to enter Malta are those who have been prohibited to enter through an alert in the Schengen Information System and those considered to be a threat to public policy, national security or the international relations of any of the Schengen States, under the Laws of Malta or of the law of another Schengen State.

The right to enter and reside in Malta on the basis of economic self-sufficiency is generally a right reserved for EU, EEA and Swiss nationals, consequently, residence permits on the basis of economic self-sufficiency are generally not issued in respect of third country nationals. Third country nationals are in most cases directed to apply for a residence permit on the basis of studies, employment or on the basis of one of the residence programmes indicated in question 10.5 below.

### 10.2 Does your jurisdiction have any investor and/or other special categories for entry?

Yes, Maltese citizenship by investment may be granted by virtue of the amendments to the Maltese Citizenship Act, Chapter 188 of the Laws of Malta. A person applying for Maltese citizenship by investment benefits from a Schengen residence status for one year prior to the issue of a Maltese passport. Thus, this grants entry to Malta without the requirement of a visa for those investors applying for Maltese citizenship.

#### Eligibility for Maltese Citizenship by Investment

To qualify under the regulations, a Main Applicant for Malta Citizenship by Investment must be at least 18 years of age and must meet the necessary investment requirements.

The main applicant may also add dependents to a citizenship application including his/her spouse or partner, children and parents or grandparents, under certain conditions, to benefit under the Malta Citizenship by Investment Programme.

Beneficiaries under the Global Residence Programme may also additionally apply for citizenship under this Programme. This Citizenship by Investment Programme is currently being seen as one of the best in the world.

#### 'Fit and Proper' Test

Applicants must show they are in good standing and repute and will undergo a 'fit and proper' test. The Government of Malta is committed to the highest standard of due diligence to ensure only deserving and reputable applicants are allowed to proceed for the grant of Maltese citizenship.

A four-tier due diligence process is carried out directly by the Government that will assess applicants and will process and approve applications at various stages.

Applicants must demonstrate a clean criminal record, with checks being conducted with the International Criminal Court, INTERPOL and various other authorities and sources. Applicants must provide a clean police certificate which may be submitted subsequently to the submission of the application but at all times prior to approval.

#### Good Health

Applicants must show that they do not suffer from a contagious disease or a condition requiring treatment which can impose a burden on the Maltese health system.

#### Contribution to the National Development & Social Fund

To qualify for Maltese Citizenship by Investment, the main applicant is required to contribute at least €650,000 to Malta. Of this contribution, 70 per cent will go into the National Development & Social Fund set up by the Government of Malta and run by a board of trustees. The rest goes to the consolidated fund. Spouses and children are required to contribute €25,000.

This contribution and the investments below need only be made AFTER approval of the applicants' citizenship application.

#### Property Purchase or Rental

The Main Applicant is required to make an investment in property of at least €350,000 or enter a property rental contract for at least €16,000 per annum, both on five-year contracts. The property bought or rented may not be let or sub-let for the first five years.

#### Investment in Bonds/Shares

Applicants are required to invest at least €150,000 in bonds or shares from time to time approved by the Maltese Government to be kept for at least five years. This investment will need to be made in stocks sanctioned by the government as beneficial to the Island.

#### Residence Status

The "residence requirement" requires evidence of a genuine link with Malta. Approved Agents obtain advance written approval from Identity Malta of their clients' proposed links. Citizenship is granted after 12 months from effective date of commencement of the genuine link with Malta. Candidates must commit to some presence (but not 365 days) in Malta before citizenship is granted. Persons already resident one year prior to IIP approval already satisfy this requirement.

### 10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

In order for a person to qualify for Maltese citizenship by investment, such person has to be at least 18 years of age and of good standing and repute. Applicants must demonstrate a clean criminal record, with checks being conducted with the International Criminal Court, INTERPOL and various other authorities and sources. Applicants must also show that they do not suffer from a contagious disease and that they have a global health insurance policy. At the beginning of the process, one must show a balance of at least €60,000 in their bank account.

Apart from the acquisition of citizenship by investment, Maltese law grants citizenship to any person born in Malta, provided either of the

parents is also a citizen of Malta. Maltese law can also be acquired by descent if an applicant proves that one of his descendants was born in Malta from a parent also born in Malta. Adopted persons also acquire Maltese citizenship automatically provided they are under 10 years of age. Foreign citizens married to a Maltese spouse can also register for Maltese citizenship after being married for five years.

#### 10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

Maltese citizenship alone does not change the tax treatment of an individual. The basis for taxation under the Maltese tax system are based on domicile and residence – not citizenship. The grant of Maltese citizenship to a non-domiciliary of Malta does not cause the beneficiary to acquire a new domicile of choice in Malta. Residence for tax purposes is established by demonstrating an intention to reside in Malta indefinitely and definitely on the basis of a day count of 183 days.

#### 10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

The other modes of residence in Malta are represented through the different Malta residence options available.

The Malta Ordinary Residence status is an attractive residence status currently available to EU & EEA nationals and nationals of Switzerland, Liechtenstein, Norway and Iceland seeking to transfer their tax residence to a safe, high quality and tax-efficient jurisdiction such as Malta. Applicants for ordinary residence status must demonstrate financial independence by providing a bank statement showing a balance of at least €14,000, if single or else €23,000, if married. Ordinary residents must also evidence their local residential address by purchasing or renting a house or apartment in Malta. This needs to be available at the time of filing of the application.

The Residence Programme known as TRP is a programme designed to attract individuals who are nationals of the EU, EEA or Switzerland and who are not permanent residents of Malta. For a person to be eligible to the Malta Residence Programme, one must own or rent property which the individual occupies as his principal place of residence worldwide. When purchasing a property, its value must be of at least €275,000 and of €220,000 when the property is in the south of Malta or in Gozo. When renting a property, the values are set at €9,600 per annum for immovable property in Malta and €8,750 per annum for immovable property in Gozo or the south of Malta. Here it is important to note that the qualifying property may not be let or sub-let. An applicant must show that he is economically self-sufficient to maintain himself and his dependant without making use of the social assistance system in Malta. The applicant must be in possession of sickness insurance which covers himself and his dependants in respect of all risks across the whole of the EU normally covered for Maltese nationals. The applicant is to be a fit and proper person and must produce a police conduct certificate issued not earlier than six months prior to the date of submission of the application, together with a sworn declaration taken before a Commissioner for Oaths in Malta confirming that the applicant is not subject to any ongoing civil or criminal proceedings.

The Malta Global Residence Programme known as GRP is a programme designed to attract individuals who are not nationals of the EU, EEA or Switzerland and who are not long-term residents. Individuals benefitting from this Programme are not precluded from working in Malta, provided they satisfy the requisite conditions for

obtaining a work permit. The aim of the Malta Global Residence Programme is to formally recognise as tax resident for Maltese tax purposes those foreign nationals satisfying the eligibility criteria of the Malta Global Residence Programme. The Maltese Residence Programme requires that an economically self-sufficient residence candidate maintains a permanent address in Malta in the form of residential property purchased or rented in Malta or Gozo. Permit holders are required to reside not more than 183 days in any foreign jurisdiction in any year. One application can include the main applicant as his spouse, financially dependent ascendants and other non-family members and dependent relatives that are shown to be *bona fide* members of the household. Children under the age of 25 are automatically eligible for inclusion. Applicants must demonstrate their financial self-sufficiency and must be in possession of valid sickness insurance cover. Within 12 months of taking up residence under the Malta Global Residence Programme, the residence permit holder needs to comply with the requirement of acquiring or renting property in Malta. Residence candidates are required to demonstrate that an address is available to them in Malta by buying or renting property in Malta. Candidates for the residence programme need to meet minimum property value requirements at €275,000 for property in Malta and €220,000 for property in Gozo and the Southern Region of Malta. Candidates have the option to rent property in Malta at €9,600 or property in Gozo and the Southern Region of Malta at €8,750 in annual rent.

The Malta Residency by Investment Programme is designed to attract reputable individuals and their dependents who are not nationals of the EU/EEA and who are not long-term residents or residents in Malta under any other Residence programme. Malta's Schengen membership and full implementation of the Schengen Area Treaty since 2007 offers holders of the Investor Visa greater ease of travel within the Schengen Area and the right to reside, settle and stay indefinitely in Malta. The Malta Investor Visa Programme beneficiaries are taxable on a remittance basis. This is because the Malta Investor Visa Programme beneficiaries are deemed to be non-domiciled residents of Malta and therefore taxable on a remittance basis (taxable only on foreign source income remitted to Malta and only to the extent remitted). Individuals are not taxed on foreign source capital remitted to Malta. Income and capital gains arising in Malta are subject to tax in Malta, whilst capital gains arising outside of Malta fall outside the scope of Maltese tax.

## 11 Reporting Requirements/Privacy

### 11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

Malta, as a member of the EU and several international organisations is a state committed to transparency and implements a number of international tools designed for exchange of information in financial and taxation matters. Malta signed an Intergovernmental Agreement (“IGA”) with the US on 16 December 2013 to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (“FATCA”). The IGA requires financial institutions in both Malta and the US to submit the information to their own tax authorities, which in turn will automatically share such information with the other tax authority.

On 19 March 2014, Malta was one of the countries which committed to the early adoption of the OECD's new standard for the automatic exchange of information between tax authorities, also known as the Common Reporting Standard (CRS).

Malta has also transposed several European Directives such as the Savings Directive [2003/48/EC] regarding exchange of information on interest payments made by paying agents established in their territories to individuals being residents in member states to be replaced by the new Administrative Cooperation Directive [Directive 2014/107/EU].

To date, Malta has double taxation treaties in force with over 70 countries most of which are largely based on the OECD Model Convention which provides for a duty on the competent authorities of the Contracting States to exchange such information as is foreseeably relevant for carrying out the provisions of the Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind. Furthermore, Malta has also concluded a number of Tax Information Exchange Agreements with the Bahamas, Bermuda, Cayman Islands and Gibraltar.

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**11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?**

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There are no reporting requirements in respect of structures outside of the jurisdiction which a person in the jurisdiction is involved with.

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**11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?**

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No, there are not.



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Jean-Philippe is a co-founder and senior partner of Chetcuti Cauchi. He has significant experience in advising local and foreign corporations and investors in Europe, and acts as legal counsel and tax consultant to individuals, business families and companies seeking a tax-efficient commercial or residential base in Malta and/or Cyprus. His main specialisation is supporting UHNWI and private clients in relation to their immigration and estate planning requirements.

Jean-Philippe is recognised for his in-depth experience in trust and estate administration and corporate and asset protection structures, and for his handling of sophisticated domestic and international transactions. He is a key advisor on European citizenship by investment programmes and acts for family offices around the globe.

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Priscilla is one of the partners of Chetcuti Cauchi and she heads the corporate services department with the firm's corporate administration arm. She is mainly specialised in the use of European trusts and estate planning strategies for wealth preservation and succession planning.

Priscilla's practice revolves around assisting clients in business start-up stage or with acquisitions, corporate restructurings, shareholder matters and providing day-to-day company law and tax advice to companies under the firm's administration.

Priscilla has experience in advising UHNWI with their wealth structuring and wealth preservation strategies. Working closely with the firm's significantly international client base, Priscilla provides tailor-made tax efficient solutions through trusts and corporate structures set up in Malta and Cyprus. She is also heavily involved in executive relocation planning and related legal and tax matters.



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