

# MALTA – FOCUSING ON FINANCIAL SERVICES



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Malta's economy has grown significantly in strength during the last decade and it is a modern, prosperous economy with a well developed infrastructure.

Malta ranked 52nd in the 2009 World Economic Forum's Global Competitiveness Report, out of 134 countries, ahead of jurisdictions such as Brazil, Russia, Turkey and Greece.

Malta rates 33rd in the world for its institutions and 38th for its infrastructure. More significantly it ranks 13th in the world for the sophistication of its financial markets, rating 19th for the restriction of its capital flows and 13th for the soundness of its banks.

Figures like this explain why Malta is ambitious about expanding its financial sector to be

responsible for 25% of its GDP by 2015. It currently accounts for around 12% of a total GDP of around £6 billion, which equates to about £720 million. It has grown from 3% to 12% inside the last 14 years.

Andrew Manduca, president of the Institute of Financial Services Practitioners (IFSP), says that Malta really took off as a financial services centre after May 2004, when it joined the EU.

He said: "There are three main pillars to Malta's regulated financial business, namely banking, insurance and funds. The funds sector is the fastest growing, followed by insurance, then banking."

He believes that issues such as passporting rights in Europe and the fact that English is the main business language in Malta has helped to move the financial services industry forward.

He said: "Malta's onshore status means we don't compete with offshore jurisdictions, as an EU member our competition is with other European states, but the cost structures in Malta are much lower. There is also a bit of geography that can play to our advantage, as more and more companies from further south in the Mediterranean, but not in the European Union, set up in financial services. Malta has various double tax treaties with the Arab world that come in helpful for financial services business."

## Passporting and the European Advantage

Malta's membership as a fully-fledged EU member state since 2004 has had an important impact on the jurisdiction's attractiveness, particularly 'passporting', or the ability to sell financial products based in one European country into another.

Ramona Piscopo, tax lawyer at Loyens & Loeff, says that passporting is an important aspect of the EU membership that has boosted Malta's attractiveness.

She said: "Passporting regulations offer yet an additional element of flexibility and the "European Union" peace of mind that comes with it allows Malta to be at par with other European jurisdictions and ahead of non-EU jurisdictions that do not have access to pass-porting rights."

Simon Tortell, partner at Simon Tortell Associates, says that he has been particularly active in the passporting of investment funds to and from Malta.

He said: "Our clients are either Maltese-based UCITS funds, licensed in Malta and wishing to

distribute their units across the European Union, or a UCITS established in other EU Member States, who wish to make their units available in Malta through the fast-track passporting process. More recently, we have also received a number of queries from offshore professional investor funds wishing to re-domicile to Malta and convert to a Maltese-based UCITS and thereby take advantage of the passporting regime."

He added: "On the insurance and banking side, we have also advised international clients to set up a regulated operation in Malta as a hub for the passporting of their products and services across the EU."

Laragh Cassar, senior associate with law firm Camilleri Preziosi, has been actively involved in providing legal advice and services to European banking, insurance and fund businesses intending to passport their services to Malta.

She said: "Our services have ranged from providing legal advice as to the passporting requirements (and indeed whether passporting is at all necessary), to the actual passporting process. Furthermore, we are generally retained by the European entity following the passporting process has been completed with a view to providing legal advice on ongoing legal issues arising from their operations in Malta."

## Taxation system

Under the Maltese imputation tax system companies in Malta are taxed at 35% from company profits, a portion (6/7ths) of that tax is repaid to shareholders upon distribution of dividends. It is paid back within 14 days of the end of the month in which the dividend was distributed. Simon Tortell says that the EPSD and Maltese law establish that where a subsidiary pays dividends to a parent located in another EU State, no withholding tax is levied.

He added: "However, whilst under the Directive the subsidiary must be 10% held by the parent, this is not the case under Maltese law. Furthermore, under Maltese law shareholders can, upon a distribution of dividends, receive a full refund of the Malta tax paid by the company. Such refund is not taxable in Malta."

Laragh Cassar says that, in certain circumstances, these refunds reduce the effective tax burden on distributed profits to between 0% and 11.7%.

She adds: "Furthermore, dividends, interest and royalties may also benefit from the EU Parent Subsidiary Directive or the Interest and Royalties Directive. Double tax relief may come in the form of treaty relief (to which Malta has contracted a wide array of OECD based treaties) as well as unilateral relief and a flat rate foreign tax credit resulting from local legislation."

Ramona Piscopo believes that Malta is regarded very highly as a holding jurisdiction because of a combination of the participation exemption and zero withholding tax.

She said: "Participation exemption means that, upon certain conditions being met, dividends and capital gains received by a Maltese company (MaltaCo) from its participation in another (non-Maltese) company are exempt from tax in Malta. Zero withholding tax on dividends distributed to MaltaCo's shareholders ensures that there is also no tax suffered by those shareholders in Malta."

She added: "The fact that Malta has never had a system of withholding tax on dividends distributed to foreign shareholders and thus does not have to depend on treaties or other agreements, such as the Parent-Subsidiary Directive, allow a much greater flexibility than other jurisdictions as a holding jurisdiction. It is important to ensure that any entity used in a structure has sufficient physical and economic substance."

With regard to investment funds, tax differs depending on whether the fund is prescribed or non-prescribed. A fund is non-prescribed if it has at least 85% of its total assets situated outside Malta

Ms Cassar, from Camilleri Preziosi, added: "Other than for income from immovable property situated in Malta, which is subject to thirty-five percent (35%) tax, any income payable to the non-prescribed fund including local investment income is exempt from tax irrespective of the vehicle used for the fund structure. Any dividends received from Maltese and foreign companies are not subject to further tax in the hands of non-prescribed funds and capital gains derived from the disposal by the collective investment scheme of securities or units in other schemes are not subject to tax."

## The Maltese Stock Exchange

Malta's stock exchange is a very useful component of its offering to financial services

companies considering using the jurisdiction as a domicile. The exchange is able to help Maltese companies to raise funds by creating a market for equities or debt securities, it can also facilitate a market for funds by listing units.

Simon Tortell says he has been involved in a number of equity and bond listings on the Malta Stock Exchange providing advice on the structuring of these issues and reviewing offering documents and private placement agreements.

He has also provided extensive advice to a closed-ended non-UCITS platform wishing to offer its units across the EU through Malta and achieve a secondary market for its units via a listing on the Malta Stock Exchange.

He said: "The reputation of the Malta Stock Exchange, together with the transparency and effectiveness of the MFSA Listing Rules and the MSE Bye-Laws and the contained listing costs are the main attractions of our listing regime."

Camilleri Preziosi has a well developed capital markets practice in Malta that has taken to market 61% of all equity securities and 68% of all debt securities currently listed on the Malta Stock Exchange.

Ms Cassar said: "This market share is expected to increase due to a further equity issue and three debt securities issue in the pipeline targeting Q1 2010. During the past 12 months we have acted for International Hotel Investments plc with a new bond issue; as well as a combined offering of equity and debt of Island Hotels Group Holdings plc; a bond issue by Melita Capital plc and we have just completed the bond issue by Mizzi Organisation Finance p.l.c."

She added: "We were responsible for the listing of a number of funds on the Malta Stock Exchange, including, a number of sub-funds within the following schemes La Valette Funds SICAV plc, Vilhena Funds SICAV plc and Wignacourt Funds SICAV plc. A number of other similar listings are currently in the pipe-line."

## Taking advantage of scrutiny

The increased scrutiny of the alternative investment fund industry in the wake of the global economic crisis has worked to the advantage of well regulated jurisdictions such as Malta.

The OECD's much publicised white and grey lists of countries around the world has had a negative effect on many offshore jurisdictions that

have, historically, offered low levels of regulation, oversight and transparency to financial services businesses. Many players are now looking to domicile investment funds, or insurance companies, in jurisdictions that are white-listed and well regarded by international bodies and therefore potential investors.

Ramona Piscopo says that the relationship that a particular jurisdiction has with other relevant jurisdictions is vital when setting up a corporate structure, since this "relationship" impacts the bottom-line tax suffered.

She said: "Malta has received the OECD's confirmation of Cooperation in Exchange of Information matters. The recent updates on countries cooperating in Exchange of Information issued by the OECD saw Malta constantly retaining its position on the white-list."

She added: "By cooperating with internationally agreed standards and norms, "white-listed" jurisdictions benefit from the additional confidence they are afforded. For example if A Ltd (resident in Country A) owns shares in B Ltd (resident in Country B) which is a blacklisted jurisdiction, Country A's anti-abuse provisions could provide that dividends received from B Ltd constitute taxable income in Country A. If Country B was a white-listed jurisdiction and Country A's anti-abuse provisions were not triggered, it could well result in a lower tax burden on the structure."

Ms Cassar agrees that the introduction of closer regulations could be beneficial, both specifically within the investment management industry and generally for Malta as a financial services centre.

She does sound a note of caution however and suggests that the introduction of the current draft of the European AIFM Directive requires further thought and improvement.

She said: "Closer regulation, as long as it is properly drafted and thought out, ought to provide a good complement to the attractive features offered by Malta."

We believe that that the introduction of a more stringent regulatory framework for Alternative Investment Funds and Managers will result in a migration of these investment funds to onshore and well regulated jurisdictions such as Malta. Malta is not only a reputable and highly regarded jurisdiction in the EU but offers a number of interesting solutions for offshore non-UCITS funds wishing to relocate to Malta.