



# **Migrating Luxembourg 1929 Companies to Malta and the Changing of Domicile to Malta.**

Following Malta's entry to the European Union in 2004, the financial services sector on the island has made significant developments in the European financial services scene. Accession has placed Malta on the financial map as a very significant and competitive jurisdiction. The benefits derived from EU membership include the direct applicability of EU Regulations and transposition of financial services directives, the extensive network of double taxation treaties, as well as a number of other business and financial promotional incentives.

The Malta Financial Services Authority (MFSA) is the single regulator of all financial services in Malta, wherefrom the regulation and supervision of the financial industry in Malta emanates from. It is the single point of decision-making as well as point of reference in the sector. It is responsible for the licensing, regulation and supervision of credit institutions, money institutions and financial institutions.

## **Tax systems in Luxembourg and Malta**

Maltese companies involved in international business, whether holding and/or trading activities are fiscally resident in Malta and are taxed in Malta at a corporate rate of 35%. A Maltese company is deemed to be tax resident in Malta when the control and management of its business is exercised in Malta.

As in Malta, Luxembourg enjoys a full imputation system, in such a way that double taxation in the hands of both the company and its shareholders is avoided. Tax benefits arise upon a dividend distribution by the company to its shareholders. On such a distribution the shareholders will be entitled to a refund depending on the source of income.

The 6/7ths Refund	In the case of profits deriving from any holding or trading activity of a Maltese Company and distributed by it to its shareholders by way of dividends, the shareholders in receipt of the dividends are generally entitled to a refund of 6/7ths of the tax paid by the Maltese Company at the standard rate of 35% corporate tax rate.	In this case the effective Maltese tax rate is of 5% on the trading income.
The 5/7ths Refund	In the case of profits distributed by way of dividends to the shareholders of a Maltese Company and deriving directly from any “passive interest or royalties” of the Maltese Company, the shareholders in receipt of the dividends are entitle to a refund of 5/7 <sup>th</sup> of the tax paid in Malta by the Maltese Company, thereby resulting in a tax leakage of 10% in Malta.	In this case the effective Maltese Tax Rate of 10% on passive income.

The 6/7ths refund is increased to a 100% refund where the Maltese company has a participating holding. Otherwise, it may be decreased to 5/7ths where the Maltese company received passive interest and royalties which were subject to less than 5% tax in the source country. Under another scenario, the refund may be decreased to 2/3rds where the Maltese company has availed itself of double taxation relief in respect of passive income.

In Luxembourg, holding companies are not taxable on their profit, whether deriving from dividends or interests or on realised capital gains. Instead such holding companies are tax liable on the real value of the assets under the *droit d'apport* (Capital Contribution Duty), or on the shares under the *tax d'abonnement* (Composition Duty). As a result of its taxation system, Luxembourg avoids double taxation, this is also the case in Malta where double taxation is avoided though its full imputation system.



## **Migration of companies to Malta**

The migration of companies, also known as the 're-domiciliation of companies' or 'continuation of companies', is a recent phenomenon, where a company is transferred from one jurisdiction to another in such a way that its existence is not terminated, but continued in another jurisdiction. In this way there is the continuation of the original company in a new jurisdiction, which includes its legal personality.

In Malta, continuation, migration or re-domiciliation of companies is regulated by Legal Notice 344 of 2002, known as the *Continuation of Companies Regulations 2002*, which Regulations have been enacted by means of powers conferred by the Malta Companies Act, 1995 (Cap. 386 of the Laws of Malta), Article 425 (4). Regulations of LN 344 of 2002 have been amended by virtue of Legal Notice 352 of 2003. These Regulations govern the continuation in Malta of a foreign body corporate as well as the continuation of a Maltese company in another country or jurisdiction outside Malta.

## **Changing the domicile of a company to Malta**

One has to start off by confirming whether or not this is allowed by the authorities of the foreign country and then go on to confirm that the migration of the company is allowed by the instrument constituting the body corporate. Following this a request to the registrar of companies to register the company in Malta must be made.

## **Procedure before the Maltese Registrar of Companies for the re-domiciliation of Companies**

The procedure for the proper migration of foreign entities to Malta is regulated by the Regulations referred to above, as well as Legal Notice 386.05 which in fact, lists all the necessary documents which are to be submitted to the Malta Registrar of Companies (i.e. the MFSA). It is important to ensure that the striking off of the company from the original jurisdiction does not happen before it is registered as having continued in Malta.

The following documents must be presented to the Registrar of Companies when requesting the registration of the Company in Malta.

- A resolution (in the English language, or a translation in English) by the foreign company authorising it to be registered as being continued in Malta.
- The resolution should be, as far as possible, approved by such a majority as would be necessary in the company's country of origin for an extraordinary resolution.
- A copy of the revised document constituting the company (which adheres to the requirements of registration of a company in Malta). This revised document will be considered as the Memorandum of Articles of Association of the Company upon registration in Malta, even at the temporary registration stage.
- A certificate of good standing or an equivalent document issued by the competent foreign authority which incorporated or registered the company. This document should be in English or else a certified translation must be provided.
- A declaration signed by at least two directors of the foreign company (unless the board of directors is composed of one, or if there are no directors, by 2 persons vested with the administration and representation of such company) confirming:
  - ➔ The name of the foreign company and the name under which it is being continued.
  - ➔ The jurisdiction under which it is incorporated.
  - ➔ The date of incorporation.
  - ➔ The decision to have the foreign company registered as continuing in Malta.
  - ➔ That the foreign company has given formal notice to the relevant authority (in its country of origin) of its decision to be registered as continuing in Malta in accordance with the procedure laid down in Maltese law.
  - ➔ Evidence of the above mentioned formal notification.
  - ➔ No proceedings for breach of the laws of the foreign country have been commenced against such company, unless such proceedings which arise out of an event which on the date of the occurrence thereof did not constitute such a breach.



- ➔ Confirming the solvency of the foreign company and that they are not aware of any circumstances which could negatively affect in a material manner the solvency of the company within 12 months.

*Any director of person vested with the administration or representation of the company making a false declaration of solvency is liable on conviction to a maximum fine of €46,587.47*

- A list of the directors of the foreign company, the company secretary and any other persons vested with the administration of the representation of the foreign company.
- A document (to the satisfaction of the Registrar) showing that such a request to continue the company in Malta is permitted by the laws of the company's country of origin.
- A document (to the satisfaction of the Registrar) showing the consent for the continuing of the company in Malta from such number of the shareholders, debenture-holders and creditors of the foreign company as may be required by the laws of the respective foreign country

#### **Registration in Malta:**

- Once the Registrar is satisfied with the documents produced, the Registrar shall provisionally register the company provisionally as a company continuing in Malta from the date dictated in the Provisional Certificate of Continuation.
- Within 6 months from the date of issue of the Provisional Certificate of Continuation, the company shall submit documentary evidence to the Registrar that it has ceased to be a company registered in a foreign country. Failure to provide this shall grant the Registrar the discretion to either:



- ➔ Strike the name of the company off the register and inform the relevant authority in the company's country of origin that the company is not registered in Malta.
- ➔ Or upon reasonable cause being shown allow a further period of three months before striking the name of the company off the register.

Upon the presentation of the documents mentioned in the previous paragraph and upon surrender to the Registrar of the Provisional Certificate of Continuation, the Registrar shall issue a Certificate of Continuation confirming that the company has been registered as continuing in Malta.

**Effects of Registration in Malta:**

- The company to which the provisional certificate relates shall be a body corporate incorporated under the Maltese Companies Act.
- Is subject to all the obligations and capable of exercising all the powers of a company registered under the Maltese Companies Act.
- Registration of the company in Malta shall in no way bar or render defective:
  - ➔ Any legal or other proceedings instituted or to be instituted against or by the company.
  - ➔ Any conviction, judgement, ruling, debt, liability or obligation due or to become due or any cause existing against the company or against any member, director, officer or persons vested with the administration or the representation of the company.

Where the shares in the company are subject to a pledge, charge, assignment by way of security or similar security in its country of origin, such security shall continue to be valid



and effective under the laws of Malta and following registration shall be fully enforceable under the Companies Act.

**Non-permissible Registrations:**

No request for the registration of a foreign company as being continued in Malta may be granted if:

- ➔ The dissolution or winding up of the foreign company has commenced or insolvency proceedings, arrangements, compositions, recovery proceedings or any other analogous proceedings have been commenced by or against the foreign company
- ➔ A liquidator or special administrator of the foreign company or a receiver of its property has been appointed.
- ➔ There is any scheme or order in relation thereto whereby the rights of creditors are suspended or restricted.
- ➔ Any proceedings for breach of the laws of the country or jurisdiction of incorporation have been commenced against the company, not being proceedings arising out of an event which on the date of the occurrence thereof did not constitute such a breach.