

Malta

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Continued growth and accessibility

Max Ganado
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Since Malta joined the EU in 2004 there has been major growth in the financial services, IT and connected business sectors. This appears to be gaining even more momentum now that the EU has approved the Maltese taxation system, thus ensuring stability in interpretation of the rules on corporate and shareholder taxation. Under Maltese law, all companies are subject to tax at the rate of 35%. Malta applies the imputation system: tax paid by companies is imputed to its shareholders. As a non-taxable person effectively suffers tax when a Maltese company is taxed, this gives rise to various levels of refund to the shareholder, subject to detailed provisions in the law. As in many other countries, investment funds are not taxed at the fund level, even when corporate.

A streamlined regulatory system

The tax element is not the main attraction to use Malta as a corporate and services jurisdiction. What is emerging as more relevant is the speed and cost of obtaining regulatory approvals for investment services and funds, insurance and banking and even trustee services. Authorisations are issued only on compliance with EU law on the relevant subjects and hence enjoy the relevant status. The issue of licences allows authorised persons to passport their services within the EU without further need of review.

Malta has a unified regulatory infrastructure in the Malta Financial Services Authority, which regulates banks, investment firms, insurance companies, trustees and fiduciaries, pensions, regulated markets and securitisation and even houses the registry of companies. This is a great advantage, and the process is

streamlined and consistent, avoiding duplication and overlap between different regulators.

The Maltese Government has been able to promulgate legislation efficiently to address new challenges. This has been the case for the last few years. Laws are regularly and efficiently passed to align Maltese law to EU law and to implement new directives such as the Financial Collateral Regulations, Mifid, the Consolidated Life Insurance Directive and the Non-Life Insurance Directives. Other Laws are passed to introduce new concepts into the general law, such as segregated cells for insurance companies and collective investment schemes, a feature recently extended to all registered corporate entities.

Re-domiciliation of companies to Malta is possible: this has helped attract various regulated entities, including captive insurance companies and hedge funds, from offshore centres into the EU zone. The government recently introduced a new Law on Foundations which will complete legislative efforts to address the whole of the fiduciary sector, after having enacted legislation to introduce trusts within the Maltese Civil Code.

To support the banking and funds industry, netting and set-off provisions were enacted to ensure that these operate effectively both before and after insolvency. Specific provisions were introduced on interest rates, subordination agreements, security trusts and other matters. All these developments make operators, and more importantly their counterparties in other countries, comfortable with the legal system.

This trend is expected to continue, with the MFSA and other organisations actively involved in developing new opportunities for enterprise in general. The most recent consultation paper issued by the MFSA relates to *shariah*-compliant banking and other financial services. The Ministry of Justice has also promoted new rules on special charges on particular movables. The aim is to allow particu-

lar registered securities on plants and machinery, stocks and other items that are not easily pledged as the borrower needs to continue to use them.

Further reforms

A recent amendment expanded the Law on Enterprise Support to all commercial sectors and, within the State Aid Rules set out by the EU, all sectors can be incentivised through innovative ideas which eventually secure employment for the labour force, which is moving out of industry and into services at a very fast pace. The University of Malta sees over 2,500 students graduate every year. Graduates are being absorbed by new business as older industrial operators are outsourcing to cheaper industrial centres like India or China. New industrial projects are high-tech industries such as producers of microchips and pharmaceuticals.

The IT sector has been the subject of continual focus. This has been reflected in education, government and a very large infrastructural development taking place under the name of Smart City, which involves the construction of an IT zone planned to employ over 5,000 people in the coming years. Demands on this sector are already very high in view of the gaming industry which, being regulated in Malta, has grown markedly as a result. This includes online gaming, which is also regulated.

The policy not to be an offshore centre but to align with the mainstream EU states has proved to be an excellent decision. Malta does not have impenetrable secrecy laws (although professional confidentiality is legally protected by criminal sanction) and has over 40 tax treaties that contain exchange-of-information provisions. The effect of this is enhanced credibility as a result of higher and more detailed levels of regulation, more transparency and less emphasis on tax benefits.

Financial and corporate

Recommended firms	
Tier 1	
Camilleri Preziosi Advocates	
Ganado & Associates	
Mamo TCV Advocates	
Tier 2	
CDF Advocates	
Fenech & Fenech Advocates	
Galea Salomone & Associates	
Grech Vella Tortell & Hyzler Advocates	

On January 2008 Malta adopted the euro as its official currency, but the move has already generated a clash of opinions from market commentators. Some believe the new currency will contribute to a more effective participation of Maltese companies on the single market, fostering macroeconomic stability and encouraging more trade with EU members.

“The introduction of the euro has been an incentive for foreign firms to do business in Malta,” says one partner. “The euro has reduced drastically currency risk. Companies are now seeing Malta as a fully integrated jurisdiction with the EU market, which of course brings great advantages to all law firms in the jurisdiction.”

But others believe the new currency will have catastrophic consequences for one very important sector in Malta - tourism. Commentators say the new currency has the potential to scare away tourists looking for a cheap and sunny place to spend their holidays.

Camilleri Preziosi Advocates

“They are a tier one firm in all the rankings, and I don’t see a reason why this should change,” says one peer of Camilleri Preziosi.

This year, the firm has been an active participant in the equity capital markets, winning roles on the equity offerings of two Maltese incorporated companies - one on London’s Aim board and one on the Stock Exchange of Singapore - which were subsequently postponed due to volatile market conditions.

A notable role which did reach completion was Crimsonwing’s €3.3 million issue and offering of securities on the Malta Stock Exchange. The firm also advised the Maltese government in the €5.6 million offering of 40% of state-owned Maltapost on the exchange.

In the structured finance and securitisation market, the firm regularly advises on acquisition finance transactions structured through Maltese SPVs. One notable role was advising the Government of Malta on a securitisation

involving real estate. The firm also acted as Maltese counsel to SRF I in its acquisition of a bank of mezzanine loan notes issued by Financière Ermewa, the Swiss holding company of a European lessor of freight cars.

Banking and M&A are the firm’s main areas of expertise. The firm advised Bawag Bank Malta on a €35 million syndicated loan for the development of a real-estate project. In addition, the firm advised BNP Paribas on a €450 million debt refinancing and equity restructuring deal.

Camilleri Preziosi was also involved in a handful of acquisitions of real-estate portfolios this year. The firm advised International Hotel Investments on the €262 million acquisition of two companies which own properties in Prague and Tripoli, and advised Kemmuna Limited on its sale of a significant equity stake to various local investors.

Melita Cable also turned to the firm for advice on its €170 million sale of a majority stake to private-equity house GMT Communications Partners in July 2007. The firm must have made a good impression, as it was mandated again by Melita Cable on its purchase of 3G Telecommunications in November 2007.

Louis de Gabriele is singled out as one of the firm’s leading lawyers. De Gabriele is an active advisor of the Maltese government, and is highly praised by clients for his “knowledge and vast experience in the financial-services business”.

Leading lawyers

Louis de Gabriele
Henri Mizzi

Ganado & Associates

Ganado & Associates attracts numerous market comments praising the firm’s strong experience on privatisation and on the transfer of insurance portfolios.

“I think they have improved a lot,” says a rival. “And they have the excellent Max Ganado, who is a great lawyer with vast experience.”

On the banking side, the firm has been advising a wide range of clients on syndicated loans, investment services and insurance matters.

In February 2008, the firm appointed Karl Grech Orr as a partner. Orr is a specialist in corporate and commercial law, and an active lecturer of company law matters in Malta.

“They are one of the most active firms, possibly with the highest number of transactions in the jurisdiction,” says a competitor.

Leading lawyers

Stephen Attard
Max Ganado

Mamo TCV Advocates

Mamo TCV Advocates is one of largest firms in Malta, and one of the most experienced in dealing with privatisation mandates. One of the firm’s most important instructions in recent years was its role acting for Maltese telecoms company Maltacom on its privatisation process.

Another standout M&A transaction was the firm’s role in advising a hotel group on the acquisition of 40% of another international hotel group in the jurisdiction. The firm also recently acted for a foreign company on the €35 million takeover of a domestic company.

In addition, Mamo TCV Advocates frequently advises foreign companies in obtaining licences to operate in Malta.

Leading lawyers

Richard Camilleri
Andrew Muscat

CDF Advocates

Frank Chetcuti Dimech is singled out by commentators as CDF Advocates’ standout lawyer, and his participation on standout deals is a constant.

Chetcuti Dimech is very active in the funds market, and this year advised HSBC on the establishment of a €60 million Ucits fund specialising in ethical investment. He also acted for Valletta Fund Services on the establishment of three new sub-funds to an existing umbrella fund valued at €30 million. In addition, the firm is advising Swordfish Capital Management on the establishment of a €100 million master-feeder structure for a hedge fund.

Hypovereinsbank turned to the firm for advice on a €67 million loan to a group of companies with a Maltese holding company, while on the M&A side the firm acted for Globeleq and Tanjong in the formation of a holding-company structure.

“I am very happy with the quality of work they provided,” says one client of the firm. “As far as I am concerned, there is no room for improvement - they tick all the boxes.”

Leading lawyers

Frank Chetcuti Dimech

Fenech & Fenech Advocates

Fenech & Fenech is mostly recognised for its shipping law work, with several members of this family firm lecturing on the subject at international conventions.

Thanks to the firm’s strong reputation, Fenech & Fenech has advised a number of

clients on shipping and aircraft finance, property finance and equity capital markets work.

Leading lawyers

Tonio Fenech

Nicholai Vella Falzon

Galea Salomone & Associates

Galea Salomone is a medium-sized law firm which is highly regarded by the market for its work with foreign entities. The market acknowledges Galea Salomone's work advising foreign banks in Malta, while the firm's work with exchange listings and privatisations also comes in for praise.

Arthur Galea Salomone, the firm's leading lawyer and now deputy chairman of the Malta Stock Exchange, has had an active year in M&A. He advised Cambridge Developments on the €80 million acquisition of the Holiday Inn site, and acted for a real-estate developer on a number of large acquisitions, including the €41 million purchase of Mistra Village.

In addition, Galea Salomone & Associates helped to draft Malta's financial-services legislation, and is an active counsel to operators and clients on the implementation of EU financial-services regulations and licensing issues.

Leading lawyers

Arthur Galea Salomone

Grech Vella Tortell & Hyzler Advocates

Grech Vella Tortell & Hyzler Advocates has profited from the recent increase in M&A transactions in Malta. In the last year, the firm has been increasingly busy advising well-known multinational corporations on legal issues relating to takeovers, and acting for the Maltese government on a wide range of issues including the privatisation process.

The firm's top recent assignments include advising private-equity house GMT Communications Partners on its acquisition of Melita Cable, and advising several international banks on the establishment of Maltese subsidiaries.