

# Malta

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## Professional body:

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## Continued growth and accessibility

Max Ganado  
Ganado & Associates Advocates  
Valletta

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 particular 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
<b>Tier 1</b>
Camilleri Preziosi Ganado & Associates Mamo TCV Advocates
<b>Tier 2</b>
CDF Advocates Fenech & Fenech Advocates Galea Salomone & Associates Grech Vella Tortell & Hyzler Advocates

It has now been a year and a half since Malta adopted the Euro, and the consensus among partners is the adoption of the currency is a success. "I hate to think what might have been if the Maltese lira was still in circulation. Adopting the Euro has helped the economy become resilient," says one partner.

Commentators believe that Malta has not been as badly hit by the global downturn as some of its fellow EU members. A slowdown in certain practice areas has been felt, but the partners report that opportunities are still trickling through.

Malta's banking sector is stable, given its conservative nature, but lending has become stricter. This has led to local borrowers turning to the debt market. Seven debt issues are planned up until December 2009, providing lucrative work for capital markets-focused firms.

M&A work has stopped. However, a small, slow, resurgence is expected over the next year mostly relating to foreign companies that have set up their holding company or SPV in Malta.

### Camilleri Preziosi

Camilleri Preziosi's place in the top-tier ranking is undisputed by the market, with the firm possessing one of the most prestigious names in the country. "They are extremely efficient, available and you can compare them to the top firms in the UK," says one international banking client.

Both Louis de Gabriele and Henri Mizzi are considered leaders in the Maltese market, while one client says that associate Donald Vella is also very good. The firm is strong in all areas of financial and corporate work, and is active on the debt markets.

Camilleri Preziosi advised Lufthansa Malta Finance and Deutsche Lufthansa on the base prospectus relating to its \$4 billion MTN programme in March 2009.

On the corporate side, the firm advised the London branch of DVD Bank on the Maltese company SRF II's investment in Ox-traction. DVD Bank again instructed the firm on the

acquisition of mezzanine loan notes issued by Financière Ermewa.

Elsewhere, Camilleri Preziosi advised Axis Bank on the \$300 million financing for a power generating company located in several jurisdictions around the world.

### Leading lawyers

Louis de Gabriele  
Henri Mizzi

### Ganado & Associates

Ganado & Associates is well regarded by peers, with one saying: "I think Ganado & Associates is one of the top firms. It has a good balance, with good people and good systems." The competitor adds: "The firm is properly run; this is the distinction I make between the top tier and the second tier."

Managing partner Max Ganado "is clearly the reason the firm is at the top" says one competitor. Stephen Attard is another name frequently mentioned by the market. The firm is part of the Lex Mundi network of independent law firms, and is well known for its privatisation work.

### Leading lawyers

Stephen Attard  
Max Ganado

### Mamo TCV Advocates

Mamo TCV Advocates is seen in a similar light to the other tier-one firms, in that it brings an element of professionalism and meticulousness to its work.

Both Richard Camilleri and Andrew Muscat are respected partners. The firm is able to advise on all areas of financial and corporate work.

### Leading lawyer

Richard Camilleri  
Andrew Muscat

### CDF Advocates

CDF Advocates' expertise lies in funds work, a strong area of work for Maltese firms. Frank Chetcuti Dimech is the star, singled out as the firm's driving force. "I find Frank is excellent," says one client. "We first worked with him setting up a hedge fund, which he now manages. He is very efficient."

Recent work includes advising Valetta Fund Services on the establishment of funds in Malta. The work included six different funds, ranging in value from €10 million to €50 million per fund. In addition the firm advised Swordfish Capital Management on

the establishment of a €100 million master-feeder structure for a hedge fund.

### Leading lawyers

Frank Chetcuti Dimech

### Fenech & Fenech Advocates

Fenech & Fenech has lost managing partner Tonio Fenech, but his position has been taken by Ann Fenech, who market commentators note has the ability to drive the practice forward. "I definitely rate Ann as a tier-one lawyer," says one competitor. "Ann will do a good job as managing partner, and might make them a tier-one firm in a few years."

The firm is a big name in the shipping finance market, but is a full-service law firm with a substantial number of practitioners on staff. One highlight this year was acting for Maltese telecom company Go on its acquisition of a majority stake in three local internet hosting companies in April 2009.

In the shipping sector, Nicolai Vella Falzon led a team advising Oiltanking Malta's construction of a pipeline. Freeport Terminal also instructed the firm on the financing of its expansion.

### Leading lawyers

Nicolai Vella Falzon  
Ann Fenech

### Galea Salomone & Associates

Galea Salomone & Associates is a small firm but it is respected by competitors, with Arthur Galea Salomone singled out for praise: "I have a lot of respect for Arthur," says one peer. "He is very steady, level headed and pragmatic. The firm does get some major work, and does it properly."

Clients like the firm too: "They are extremely good. They are diligent, professional and they are safe of mind." In one highlight Galea Salomone advised JPM Bros on the acquisition of the Jerma Palace Hotel for €19.8 million. The firm is advising the Maltese trade finance focused FimBank on the acquisition of its new head office.

Salomone is advising Gap Developments on a €26 million facility from Bawag Malta Bank for a real-estate development. The firm is also advising on the structuring of a collective investment scheme for Estratègia e Gestão.

### Leading lawyers

Arthur Galea Salomone