



# Redomiciliation of companies to Malta



**N Trust Limited**  
Flat 14, Marina Court,  
Abate Rigord Street,  
Ta' Xbiex XBX1120,  
Malta, EUROPE

## Concept

A company formed, incorporated or registered outside Malta may, subject to satisfying certain legal requirements, redomiciliate (i.e. move its domicile) to Malta whilst maintaining its legal identity and henceforth be treated as a company ordinarily resident and domiciled in Malta.

There are various reasons why a company would want to redomicile to Malta, including taking advantage of the existing attractive taxation system, the excellent infrastructural facilities and a wide array of reputable and regulated financial services, aligning its place of registration with its shareholders' base and accessing specialist capital markets.

## Conditions

In terms of the Continuation of Companies Regulations, 2002 (Legal Notice 344 of 2002), a company may redomiciliate to Malta upon fulfilment of four conditions, namely:

- i. Must be **similar in nature** to a company as known under the laws of Malta. In practice this means that the company has a separate legal personality distinct from that of its members whose liability is limited to the amount, if any, unpaid on the shares respectively held by each of them,
- ii. Must be formed, incorporated or registered under the laws of an **approved country** or jurisdiction. At present the approved jurisdictions issued by the Registrar of Companies are EU and EEA member states, OECD member states, Jersey, Guernsey, Gibraltar, British Virgin Islands, Bahamas, Bermuda, Isle of Man, Cayman Islands and Mauritius,
- iii. There must be a **provision in the law** of that country or jurisdiction where the company is registered, authorizing companies to redomiciliate to another jurisdiction,
- iv. The **memorandum and articles of association** of the overseas company seeking redomiciliation to Malta must allow the continuation of the company to another jurisdiction

## Legal and fiscal implications

A company that redomiciles to Malta becomes subject to all the obligations and is entitled to exercise all the powers of a company originally registered under Maltese law.

In particular, the Regulations provide that registration of a company that redomiciliates to Malta:

- Does not create a new legal entity
- Does not prejudice or affect the continuity of the company
- Does not affect the property of the company and such company retains all its assets, rights liabilities and obligations
- Does not prejudice any legal or other proceedings instituted or to be instituted, by or against the company
- Does not release or impair any conviction, judgement, ruling, order, 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.

The newly registered company is treated as a company ordinarily resident and domiciled in Malta in terms of income tax legislation and hence becomes subject to tax on its world-wide income including foreign capital gains. However it also becomes entitled to benefit from Malta's vast **double-taxation treaty network** and applicable EU Directives.

*No taxes, exit taxes or duties are payable as a result of shifting corporate domicile from an overseas jurisdiction to Malta or vice-versa*

Malta is the only EU member state which adopts the full imputation system of taxation meaning that both resident and non-resident shareholders are entitled to a **full credit of the income tax** paid by the company on a distribution of dividends.

Upon redomiciliation, undistributed profits of the company are allocated to the Untaxed Account.

Distribution of dividends from the Untaxed Account to non-resident shareholders is **tax exempt** in the hands of the shareholders.

Due to the full imputation system of taxation adopted by Malta, upon a distribution of dividends from the company to its shareholders, the shareholders are entitled to claim tax refunds of the tax paid by the company.

The amount of the refund varies according to the source of the profits from which the distributions are made and varies from **6/7<sup>th</sup>** in respect of active income and **5/7<sup>th</sup>** in respect of passive interest and royalties in the case of trading companies (subject to a number of conditions), to a **full refund of tax** paid in the case of holding companies that derive income or capital gains from a participating holding.

### Nominee shareholders

A foreign nominee shareholder or trustee must obtain authorisation to act as shareholder of an overseas company that intends to redomiciliate to Malta.

Such nominee shareholder or trustee should *inter alia* be in possession of a valid licence to act as trustee issued by the relevant regulatory authority in an approved jurisdiction and must pay an annual authorisation fee of €1,164.69 to the Malta Financial Services Authority.

Alternatively, the foreign nominee shareholder or trustee may either obtain the relevant authorisation to act as trustee under Maltese law or may, within 15 days from provisional registration transfer the shareholding to a trustee authorised in terms of Maltese law.

### Registration procedure

An application for redomiciliation to Malta is made to the Registrar of Companies on a prescribed form and must be accompanied by a number of documents including:

- i. A **resolution** by the overseas company authorising it to be registered as being continued in Malta,
- ii. The **statute** of the overseas company which must be in compliance with Maltese law (i.e. minimum share capital rules, requirement to have a registered

office in Malta, one director and one company secretary who must be an individual),

- iii. A **certificate of good standing** in respect of the overseas company issued by the foreign competent authority;
- iv. A **declaration signed by at least two directors** of the overseas company confirming the name of the company and the name under which it proposes to be continued, the jurisdiction under which it is incorporated, the date of incorporation, the decision to have the company registered as continuing in Malta, that the company has given formal notice to the competent authority of the foreign country of its intention of continuing in Malta (evidence to be attached), that no proceedings for breach of the laws of the country or jurisdiction of incorporation have been commenced against such company and also confirming the solvency of the company,
- v. A **list of directors** of the company as well as the company secretary, if any, or of the persons vested with the administration or the representation of the company.
- vi. Evidence that proves to the satisfaction of the Registrar that request for redomiciliation is **permitted** by the laws of the foreign country and that there is the relevant **consent** of shareholders, creditors and debenture-holders.
- vii. The relative **fees**

### Official fees

The fee payable to the Registrar of Companies is the same one which applies to registration of a Maltese company and varies according to the amount of the authorised share capital.

### Provisional and final registration

Once the Registrar is satisfied that the overseas company fulfils all legal requirements, a provisional registration certificate is issued and the company may commence operations in Malta. Provisional registration has the same effects as final registration. However a final registration certificate is only issued once the company

furnishes documentary evidence that shows that it has been deregistered from the register of the foreign country where it was originally registered. This must be complete within **6 months** from the issue of the provisional certificate (subject to an exceptional extension granted by the Registrar).

#### Public companies and licensed activities

If the overseas company carries out a licensable activity (i.e. which would require special authorisation or licensing in Malta such as investment services and business of insurance) or is otherwise a public company, additional legal requirements are applicable.

#### When registration is refused

The Regulations provide for a number of instances when registration for redomiciliation of an overseas company is refused. These are as follows:

- i. When dissolution, winding up or analogous proceedings have been commenced against such company,
- ii. When a liquidator or special administrator of the company or a receiver of its property has been appointed,
- iii. Where there is a scheme or order in relation thereto whereby the rights of creditors are suspended or restricted,
- iv. Where proceedings for breach of the foreign country's laws have been commenced against the company.

#### Further information

Please contact **Dr. Antoine Naudi** by e-mail ([anaudi@naudimizzi.com](mailto:anaudi@naudimizzi.com)) or telephone (+356 2133 6555) or visit [www.naudimizzi.com](http://www.naudimizzi.com)

Licensed by the Malta Financial Services Authority and authorised to act as a trustee or co-trustee in terms of Article 43(3) of the Trusts and Trustees Act, **N Trust Limited** is able to boast an experienced in house team of dedicated lawyers, accountants and other professionals in order to provide the discretion and expertise required by our clients.

**N Trust Limited** operates from the offices which house the law firm Naudi Mizzi & Associates, a member of the European Law Firm. Its core business is the administration of trust and corporate affairs as trustee through trusts, foundations and holding companies and the provision of fiduciary services to resident and non-resident persons. We provide professional and independent trust and corporate management services on an international scale.

Both companies and trusts play a very important role in international tax and estate planning. Our close association with Naudi Mizzi & Associates, ensures that a wealth of knowledge and experience is readily available, which allows us to meet the individual needs of our clients and in doing so establish a long term relationship based on trust, discretion and efficient service.

We can help with:

- Incorporation of companies with the Malta Financial Services Authority
- Redomiciliation of companies
- Fiduciary cover
- Management and administrative services
- Procurement of Director services, company Secretarial Services and annual audited accounts
- Preparation and submission of VAT and Income Tax returns
- Applications for tax refunds