

Malta

Ramona Azzopardi, Aleksandr Belugin and Joselyn Teuma

WH Partners

TAX

Residence and domicile

1 | How does an individual become taxable in your jurisdiction?

Individuals may be subject to taxation in Malta on the basis of an established connection they have with Malta. The factors that are taken into account and that determine an individual's connection to Malta are the ordinary residence and domicile of the individual, the source of income received by the individual and, to some extent, the remittance of the income derived by the individual to Malta.

The basis of taxation in Malta can be divided into three categories, as follows:

- **Worldwide:** individuals who are ordinarily resident and domiciled in Malta are subject to tax in Malta on their worldwide income.
- **Source and remittance:** individuals who are either ordinarily resident or domiciled in Malta, but not both, are subject to tax in Malta on income arising in Malta and income (not capital gains) arising outside Malta and remitted to Malta. However, the remittance basis of taxation and the exemption of taxation of foreign source capital gains does not apply to individuals who are either ordinarily resident or domiciled in Malta, or individuals who are married to individuals who are ordinarily resident and domiciled in Malta. These individuals will automatically be subject to tax in Malta on their worldwide income.
- **Source:** individuals who are neither resident nor domiciled in Malta are subject to tax on income or chargeable gains arising in Malta irrespective of the status of the individual.

Third-country nationals who opt for long-term residence status and EU nationals who opt for permanent residence status will automatically be subject to tax in Malta on their worldwide income.

Individuals are generally deemed to be resident in Malta for tax purposes if they spend at least 183 days in a calendar year in Malta. Nonetheless, individuals who do not satisfy the 183-day criterion may still be considered as tax residents in Malta on the basis of their frequent and regular visits to Malta, family or business ties in Malta, or their intention to establish their residence therein.

Maltese law is silent on the concept of domicile and, therefore, Malta follows the British model in this respect. The domicile of an individual is normally the domicile of origin, which is acquired at birth; however, this may change to a domicile of choice if the individual proves to the satisfaction of the Commissioner for Revenue that he or she has the intention to reside permanently in a state other than the state of his or her domicile of origin and has no realistic intention of returning to his or her previous country of domicile.

With effect from the year of assessment 2019, for the effective basis year 2018, individuals who are ordinarily resident but not domiciled in Malta and who derive foreign sourced income of at least €35,000 that is

not remitted to Malta, are subject to a tax liability in Malta on their income amounting to not less than €5,000 per annum. The €5,000 minimum tax liability would not apply to individuals not domiciled in Malta who do not derive foreign sourced income amounting to €35,000 per annum. In such a case, tax will be deducted at the applicable tax rates.

Income

2 | What, if any, taxes apply to an individual's income?

An individual's taxable income is classified into seven categories, as follows:

- trading income;
- employment income;
- dividends, premiums, interests and discounts;
- pensions, charges, annuities and annual payments;
- income from immovable property;
- royalties; and
- any other income.

Such classification of income is essential for computational and reporting purposes because certain deductions and tax collection processes apply solely to certain types of income.

An individual's income is generally taxed at progressive rates. Certain types of income, such as interest and rent, may be eligible to a 15 per cent withholding tax. The progressive rates vary in line with the status of the individual, depending on whether the individual concerned is married, single, a parent, a resident or a non-resident. For single individuals, the rates are set as follows.

Range (€)	Rate (%)
0-9,100	0
9,101-14,500	15
14,501-19,500	25
19,501-60,000	25
Over 60,001	35

Special tax rates may apply to highly qualified individuals who are employed by companies that are licensed or recognised by the Malta Financial Services Authority, Lotteries and Gaming Authority or Transport Malta. Individuals who qualify may, subject to certain conditions, be liable to tax in Malta at a flat rate of 15 per cent.

Employment income and similar income is taxed at source, and the employer has a legal obligation to withhold tax and social security contributions from the employees' salaries and pass them to the Inland Revenue Department.

Capital gains

3 | What, if any, taxes apply to an individual's capital gains?

The tax on capital gains is charged on gains derived from the:

- transfer of the ownership, usufruct, assignment or cession over any rights on immovable property, securities, business, goodwill, business permits and intellectual property;
- transfer of the beneficial interest in a trust whose property includes any of the said assets; or
- rights over any interest in a partnership, which may be subject to capital gains tax in Malta.

Some exemptions and exceptions exist, for example, transfer between groups of companies, transfer of an individual's own residence upon certain conditions being satisfied and transfer between related individuals. Subject to certain conditions, non-resident individuals may be exempt from tax on capital gains arising from the transfer of securities or shares in a company that is not a property company.

Lifetime gifts

4 | What, if any, taxes apply if an individual makes lifetime gifts?

There is no gift tax; however, stamp duty may apply on certain donations of immovable property. In terms of the Duty on Documents and Transfers Act, every transfer of immovable property, or real right to it, is subject to a charge of 5 per cent or part thereof of the value of the property. By way of exception to the rule, the law provides for two instances where a duty relief applies in the case of donations, as follows:

- The first instance is when a donation is made to the donor's spouse, descendants and ascendants in the direct line and their spouses or, in the absence of the aforementioned, to the donor's siblings and their descendants. In this case, the value of the property shall be 80 per cent of the market value of the land, including the costs of improvements thereon, in the state that they are in on the date of the donation. This is applicable only if the person is acquiring the property to establish or to construct his or her sole ordinary residence.
- The second instance refers to duty relief payable by descendants in the direct line. When descendants acquire property through a donation for the first time from an ascendant, for the purpose of establishing or constructing afterwards their sole ordinary residence, no account shall be taken of the first €200,000, and 3.5 per cent duty shall be charged on the remaining value, to which proportionality also applies.

Both instances refer to donations linked to the sole ordinary residence, including a dwelling house where the individual habitually resides.

For these acquisitions to be valid according to law, the notary must record in the deed a written declaration by both the donor (transferor) and the donee (acquirer) that the property is being acquired as a sole ordinary residence for the first time, while warning both parties of the importance of the truthfulness of the declaration.

If a donation does not qualify for either of the aforementioned instances of duty relief, but the property is still acquired for use as a sole ordinary residence, it is levied at 3.5 per cent for the first €150,000 and the rest is levied at 5 per cent. With respect to other donations that do not fall within the ambit of the 'duty relief' or 'sole ordinary residence', the general rate of 5 per cent duty is levied.

By default, donations of marketable securities attract stamp duty of 2 per cent on the value of the shares. However, in terms of the Duty on Documents of Marketable Securities and Immovable Property Used for Business (Exemption) (Amendment) Order, the rate of stamp duty chargeable on donations made between 1 April 2017 and 1 October 2018

is reduced to 1.5 per cent. The reduced rate applies to the donation of shares issued by a company, or immovable property that qualifies as a 'commercial tenement' and has been used in a family business for three years or more. For the reduced rate to apply, the donation must be made by public deed, and the respective statutory forms must be submitted to the Commissioner of Inland Revenue on or before 30 September 2018. Further, the donation must be made by an individual to his or her spouse, or descendants and ascendants in the direct line or their relative spouses. In the absence of descendants, the individual may make the donation in favour of his or her brothers or sisters and their descendants.

There are no taxes on capital gains on the transfer of property where the property is transferred by a donation made by a person to his or her spouse, to his or her descendant or ascendant in the direct line, or to the spouse of any such descendant or ascendant, or, in the absence of any descendants in the direct line, to his or her brother or sister or to a descendant of his or her brother or sister, or to a philanthropic institution approved by the Minister concerned.

The rate of duty is increased to 5 per cent where the company that issued the marketable securities in question owns, directly or indirectly, immovable property and the value of the immovable property exceeds a certain threshold.

Where an individual subsequently transfers a property acquired by way of a donation that was exempt from duty, the date of acquisition will be deemed to be the original date of acquisition by the donor.

Capital gains tax may apply to gifts. In terms of the Income Tax Act, a donation is considered as a deemed sale made at the market value of the property at the time of transfer. The capital gains are computed by taking into account the cost of acquisition, which is the lower of the value declared for the Duty on Documents and Transfers Act or the market value at the time of donation. However, a donation is exempt if it is made by an individual to (i) his or her spouse, descendants and ascendants in the direct line and their relative spouses, or, in the absence of descendants, to his or her brothers or sisters and their descendants, or (ii) certain philanthropic institutions. Nonetheless, where the donated assets are transferred by the donee within the next five years, the donee would be subject to tax on the capital gain realised by taking into account the cost of acquisition of the asset at the time it was acquired by the donor.

Inheritance

5 | What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

There is no inheritance tax. Duty on documents and transfers is, however, imposed on the transfer of immovable property and marketable securities *causa mortis*. The general rate of duty chargeable on transmissions *causa mortis* of shares in a company is generally 2 per cent. The rate goes up to 5 per cent if the shares or securities being transferred are held in companies that are considered property companies. Transfers of immovable property *causa mortis* are generally subject to duty at 5 per cent; however, the rate may be reduced to 3.5 per cent on the value of the property upon certain conditions being satisfied. Some exemption from duty may also apply.

Real property

6 | What, if any, taxes apply to an individual's real property?

There is no property tax; however, tax and duty on documents may be imposed on the transfer of immovable property.

Generally, in an acquisition of immovable property, a 5 per cent duty is charged on the purchase price. If the buyer is an EU citizen and declares on the deed of acquisition that he or she shall reside in

the property being acquired as his or her sole ordinary residence, a reduced rate of 3.5 per cent will be applied on the first €150,000. Some exemptions apply, for example, on the transfer of immovable property between spouse and spouses who were formerly married in the context of personal separation, or between the surviving spouse and the heirs of a deceased spouse. Upon certain conditions being satisfied, first-time buyers may also be exempt from duty on the acquisition of their first property.

In a transfer of immovable property, the seller is generally subject to tax at a flat rate of 8 per cent of the transfer value. Some exemptions apply, for example, in the case of donations to relatives or philanthropic institutions; the transfer of a dwelling that has been owned and occupied by the seller for three years prior to the sale; and the transfer of property between a group of companies. The flat rate of 8 per cent may go down to 5 per cent or go up to 10 per cent upon certain conditions being satisfied.

Non-cash assets

7 | What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

Property imported for personal enjoyment by natural persons transferring their normal place of residence from another country to the customs territory within the European Union is admitted free of import duties. Such property includes household property, motorcycles and private motor vehicles. There is no relief on alcoholic products, tobacco and tobacco products, commercial means of transport and articles used in the exercise of a trade or profession. Additionally, personal property acquired by inheritance by a natural person who has his or her place of residence in the customs territory of the European Union is also admitted free from of imported duties. Otherwise, imports or exports from outside the European Union are subject to customs duty.

Other taxes

8 | What, if any, other taxes may be particularly relevant to an individual?

The standard rate of value added tax (VAT) on taxable supplies in Malta is 18 per cent; however, a 5 per cent rate applies to supplies of electricity, printed material and medical accessories, admission to museums, art exhibitions, concerts and theatres. A 7 per cent rate applies to tourism accommodation licensed according to the Malta Travel and Tourism Act, among others. A 7 per cent rate also applies to the use of sports facilities and the hiring of bicycles.

A zero per cent rate applies, among others, to exports, intra-community supplies, international transport, food (except when provided in catering), pharmaceuticals, supplies of aircraft and seagoing vessels.

Exemptions from VAT include the sale and leasing of immovable property (upon certain conditions being satisfied), financial services, education and some online gaming activities.

There is no wealth tax in Malta.

Trusts and other holding vehicles

9 | What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Trusts may elect to be either treated as see-through entities or taxed as companies in Malta.

The settlement of property on trust would be treated as a chargeable transfer realised by the settlor at fair market value. The chargeable tax would depend on the type of assets settled on to the trust:

- 8 per cent property tax on the transfer of immovable property situated outside Malta;
- 12 per cent on immovable property acquired by way of donation;
- 10 per cent on immovable property situated in Malta; and
- 2 per cent on the transfer of a sole ordinary residence situated in Malta.

However, no transfer for tax purposes would be deemed to have taken place if the settlor is the sole beneficiary.

When settling assets situated outside Malta, the deemed transfer would have no tax implications in Malta if the settlors are not ordinarily resident and domiciled in Malta.

Additionally, the settlement of assets into a trust would have implications regarding duty on documents and transfers. Settlement of immovable property is chargeable at a rate of 5 per cent and the settlement of marketable securities is chargeable at a rate of 2 per cent. No duty is due if the settlor is the sole beneficiary and has an irrevocable right to receive the trust property.

The income attributable to a trust falls within the scope of the Income Tax Act. If a trust is treated as a company, it is liable to tax on its worldwide income in the hands of the trustee at a rate of 35 per cent. Foundations may be elected to be treated as trusts or as companies for tax purposes.

If a trust or foundation elects to be treated as a company, the following treatments apply:

- A company is subject to tax on its profits at the standard corporate tax rate of 35 per cent. Upon a dividend distribution to the shareholders, the shareholders will be entitled to a tax refund of the Malta tax paid by the company. The refund may be six-sevenths, five-sevenths or two-thirds of the Malta tax paid by the company, subject to the satisfaction of anti-abuse provisions.
- A company that acts as a holding company may benefit from the participating holding regime and opt to have dividends and gains from subsidiaries that qualify as a participating holding be exempt from tax. Should the transparency model be opted for, the income realised by the trust would not be attributable to the trust and will be deemed to be derived directly by the beneficiaries instead, provided the income is arising or is received in Malta.

Trusts as well as trustee services are considered to be outside the scope of VAT.

Charities

10 | How are charities taxed in your jurisdiction?

Institutions, trusts, bequests, organisations and foundations or similar associations of public character that are engaged in philanthropic work may be exempt from income tax. Such a charity must be registered with the Office of the Commissioner of Voluntary Organisations. This type of exemption is only applicable if the Minister for Finance issues an order following an application. Before this order is issued, the entity does not enjoy the exemption.

Income that is not related to the philanthropic activities of the entity are fully taxable.

No tax is applicable on property transfers or donations to approved philanthropic institutions.

No tonnage tax is applicable on ships that conduct philanthropic or humanitarian operations.

Anti-avoidance and anti-abuse provisions

11 | What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

The Income Tax Act provides for a general anti-tax avoidance provision, which stipulates that in the event of any artificial arrangement, the purpose of which is to reduce tax liability, such arrangement will be ignored or modified, and the individual responsible for such arrangement will be reassessed. A scheme is considered as an avoidance scheme if its sole or main purpose is directly or indirectly linked to the obtaining of any tax advantage. Similar provisions exist in other tax legislations for benefit schemes. According to jurisprudence, 'scheme' has a wide connotation and includes dispositions, agreements, covenants, transfers of assets, increases in shares of a company and many other forms of transactions and asset manipulations.

The provision also stipulates that any dispositions made to a minor child or a child who is not married, and such dispositions result in payable income to the child, will be treated as income of the disponent and not of the child.

In addition to general anti-avoidance rules, there are also many specific rules whereby the Commissioner may review a series of transactions that are perceived as being of a purely tax-avoidant nature.

Malta has fully implemented the EU Anti-Tax Avoidance Directive. All provisions of this Directive may also apply in the realm of private clients.

TRUSTS AND FOUNDATIONS

Trusts

12 | Does your jurisdiction recognise trusts?

Malta is one of the few civil law countries that has enacted and developed a highly sophisticated trust law. Before 2004, when Malta enacted its own Trust Law, it adopted the Hague Convention on the Law Applicable to Trusts and on their Recognition (the Hague Trust Convention). Accordingly, Malta also recognises foreign trusts.

Where applicable, the law applicable to the trust may be foreign. In such a case, the validity, construction, effects and administration of the trust will be governed by the law of the corresponding foreign jurisdiction, and the trust will be given effect and validity in Malta through the operation of the Hague Trust Convention.

The Trust and Trustees Act also provides for the trustees the requirement to obtain a licence from the Malta Financial Services Authority. Settlers and beneficiaries of Maltese trusts may be persons who are either resident or non-resident in Malta. Assets settled on a Maltese trust must observe the mandatory rules as listed in the Trusts and Trustees Act.

The Act caters for various types of trusts, including discretionary trusts and fixed interest trusts, and purpose trusts, which are generally set up for a charitable purpose. Maltese trusts may also have an office for protectors or a supervisory council to safeguard the wishes of the settlor.

Trusts in Malta are mainly set up for asset protection and continuation of patrimony.

Maltese law allows for trusts to be converted into foundations.

Private foundations

13 | Does your jurisdiction recognise private foundations?

The law on foundations was enacted in Malta in 2007 through an amendment to the Civil Code. Before 2007, the concept of foundations was not unknown to Malta. Foundations were usually used for non-profitmaking and philanthropic purposes of public character.

Maltese foundations are often seen as an alternative to trusts and appeal more to private clients from civil law countries. Contrary to trusts, foundations have a separate legal personality. Over the years, we have seen an increased interest from high net worth individuals in foundations as a tool for asset protection and continuation of patrimony.

A Maltese foundation can be created by a public deed or through a will and obtains separate legal personality once the foundation is registered with the Registrar for Legal Persons. The deed of foundation must contain an endowment of at least €1,164.69, or of €232.94 in the case of a purpose foundation.

Private foundations are set up for the benefit of named persons or for a class of persons and may be created for numerous reasons, such as for estate planning or as part of a tax-planning exercise. Unlike a purpose foundation, a private foundation does not solicit funds from the public. In general, unlike private companies or trusts, Maltese foundations cannot be created for commercial purposes. Nevertheless, they can passively hold commercial assets or shares in a business. Foundations can also be used as collective investment vehicles.

Public foundations have no ascertained beneficiaries and may be established for a particular purpose, such as for charitable or social purposes and other lawful purposes.

A unique characteristic of a Maltese foundation is the option to create segregated cells within the foundation. In this case, while not having a separate legal personality, each cell constitutes a distinct patrimony from the other cells and from the assets and liabilities of the organisation.

Maltese law allows for foundations to be converted into trusts.

Foundations' profits are taxed at a regular corporate rate as they are treated as regular companies for income tax purposes. Foundations can benefit from the corporate participation exemption. Foundations may also irrevocably elect to be treated as trusts for tax purposes.

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

14 | Does your jurisdiction have any form of legally recognised same-sex relationship?

Malta recognises same-sex relationships. A same-sex couple can opt for a civil union or civil marriage. Once a civil union is registered, it has equivalent legal effects and consequences of a civil marriage. For a civil union to be recognised, the parties shall apply for the publication of banns at least three months before the union date and must provide the marriage registrar with their birth certificates, identification cards and copies of them, along with copies of the identification cards of the witnesses. They must also declare where and when the civil union will take place and what surname they wish to adopt.

The definition of the term 'married couple' in the Income Tax Act includes two partners who have registered their partnership as a civil union. Hence, couples in a civil union may also benefit from the joint tax computation and joint tax refund that apply to married couples.

A civil union contracted before the coming into force of the Marriage Act and Other Laws (Amendment) Act 2017 may be converted into a marriage within five years of the date of the coming into force of the Act.

Same-sex couples, and heterosexual couples, may also opt for a de facto cohabitation, which will have legal recognition after two years have elapsed from the date the couple started cohabitating and will grant basic rights to the parties. Cohabitation by means of a contract between the parties means that the couple must enter into a public deed in front of a notary and decide which rights and obligations they want to include in the contract. Cohabitation by means of a unilateral declaration results in a temporary right applicable for five years from when the

Cohabitation Act came into force. It is primarily designed for vulnerable individuals in abusive relationships who desire protection.

Heterosexual civil unions

15 | Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

As in the case of same-sex couples, heterosexual couples can also be legally recognised through a civil union, marriage or cohabitation.

SUCCESSION

Estate constitution

16 | What property constitutes an individual's estate for succession purposes?

In terms of the Civil Code, the term 'inheritance' is defined as the estate of the person deceased that devolves either by the disposition of a person or in the absence of such disposition, by operation of law. Therefore, all property that an individual acquires throughout his or her life passes to his or her heirs for the succession purposes. This includes property owned in full ownership and in co-ownership. Additionally, the concept of split ownership (ie, legal and beneficial ownership) is unknown to Maltese civil law.

Disposition

17 | To what extent do individuals have freedom of disposition over their estate during their lifetime?

An individual during his or her lifetime is free to dispose of his or her property either by an act inter vivos or by will.

Upon marriage, every couple, unless they agree to the contrary, adopt the community of acquests, meaning that everything that is contracted in marriage is owned jointly by the couple. A couple may opt out of the community of acquests, either by a pre-nuptial or post-nuptial agreement in the form of a public deed that will exclude the community of acquests and create a separation of estate. During the community of acquests, the spouses may not dispose of any of their patrimony without prior consent of the other spouse.

18 | To what extent do individuals have freedom of disposition over their estate on death?

A will is an instrument that is revocable by nature, and an individual, according to the rules laid down by law, disposes for the time when he or she ceases to live off the whole or of the part of his or her property. Therefore, an individual may not dispose of his or her estate on death as he or she deems fit, as there are certain restrictions outlined by law, related to a reserved portion.

The Civil Code provides for a reserved portion due to all children whether conceived and born in wedlock or conceived and born out of wedlock or adopted. For children less than four in number, the reserved portion is that of one-third of the value of the estate of the deceased. For four or more children, the reserved portion is that of one-half of the value of the estate of the deceased.

The Civil Code also provides for a reserved portion for the surviving spouse. Should the deceased be survived by children or other descendants, the surviving spouse shall be entitled to a quarter of the value of the estate of the deceased. In all other cases, the surviving spouse is entitled to one-third of the value of the estate of the deceased.

Intestacy

19 | If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

When an individual dies intestate in Maltese jurisdiction, the heirs, by operation of law, would be the descendants, the ascendants, the collateral relatives, the spouse of the deceased and the government of Malta. If the deceased is survived by descendants and spouse, the succession devolves as to one-half upon the children and other descendants and the other one-half upon the surviving spouse.

If the deceased is survived by descendants but not by a spouse, the succession in this case devolves all upon the children and other descendants.

If the deceased has left no children or other descendants but is survived by a spouse, the succession devolves upon the spouse.

Children or other descendants succeed to their parents (or other ascendants) without distinction of sex, whether they are born or conceived in or out of wedlock and whether they are of the same or different marriages. In terms of Maltese law, children or other descendants succeed per capita when they are all in the first degree; they succeed per stirpes when all, or some of them, take by representation.

Adopted and illegitimate children

20 | In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Yes. Natural legitimate, illegitimate and adopted children are all equal in the eyes of the law.

Distribution

21 | What law governs the distribution of an individual's estate and does this depend on the type of property within it?

Malta follows Regulation (EU) No. 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

In terms of this regulation, the applicable law is the law of the jurisdiction in which the deceased had his or her habitual residence at the time of death, unless the testator has provided in his will that a particular applicable law should govern it. In the case of immovable property, the applicable law is the *lex situs*, the place where the immovable property is situated. In the case of movable property, the applicable law is the law of the domicile (*lex domicilii*), the law where the deceased resided.

Formalities

22 | What formalities are required for an individual to make a valid will in your jurisdiction?

An individual who is not subject to incapacity under Maltese law may dispose of his or her property by will. Other formalities necessary for drawing up a valid will include, among others, the testator being at least 18 years of age and being capable of understanding and volition. The testator must be capable, at least through the use of interpreters, of expressing his or her will. The law also provides for certain restrictions that prevent certain individuals from disposing by will, which may result in individuals being interdicted from making a will on the grounds of insanity or mental disorder, and individuals who are not interdicted from doing so but have a mental disorder or other condition that renders them incapable of managing their own affairs at the time of the will. Essentially, any will made by an individual deemed to be incapacitated

under the provisions of Maltese Law rendered null, even if his or her incapacity may have ceased before his or her death.

If the individual has no descendants or spouse, he or she may dispose of the entirety of his or her estate. Otherwise, the descendants and the spouse may have a right to the portion of the testator's estate, which cannot be alienated. The disposable portion is calculated by subtracting the reserved portion due to descendants or spouse (or both).

Maltese law allows for the creation of four types of will, namely:

- ordinary public will: the most common type of will;
- secret will: its existence is only revealed upon the testator's death;
- privileged will: a will made in extraordinary circumstances, such as during pandemics, wars, etc; and
- unica charta will: a joint form of will made between a married couple.

A will can also be made through a trust or a foundation.

Foreign wills

23 | Are foreign wills recognised in your jurisdiction and how is this achieved?

Malta has implemented into Maltese law the European Succession Regulation, which aims to unify cross-border succession laws. The applicable law will be the jurisdiction of habitual residence where the person has died. Malta recognises the European certificate of succession, which heirs, legatees and executors or administrators can use to prove their status. The Regulation does not apply, however, to immovable property; hence, inherited immovable property located in Malta is governed by the Maltese law of succession.

Administration

24 | Who has the right to administer an estate?

Administration of the estate of a deceased person may be vested in a testamentary executor, the heirs (in the absence of an executor) or a court-appointed executor (on the demand of any interested party). An individual may appoint one or more testamentary executors for the purpose of administering and distributing his or her estate after death. The law regulating the appointment of testamentary executors restricts certain individuals from being appointed as such, including minors and individuals who are under a legal incapacity to contract obligations under Maltese law. The testamentary executor may not intermeddle in the administration of the estate until he or she is confirmed by the competent court presiding over such matters. Where the testator resided in Malta at the time of his or her death, the competent court shall be the Civil Court (Voluntary Jurisdiction Section). Testamentary executors may continue to administer the estate of the deceased for as long as the devolution of the estate is completed and passed to the heirs and legatees as per the testator's will. It is also possible for the executor to renounce his or her office, notwithstanding that he or she will have commenced to act as executor.

A vacant property (ie, a property that has not yet been accepted by the heirs) may be administered by a curator.

In situations where one of the heirs is a minor, the siblings or legal guardians must administer the minor's portion of the inherited estate until the minor becomes of legal age.

The testator can also create a testamentary trust to dispose of his or her estate in a particular manner. The trustees will perform the testator's wishes, and they may be overlooked by the supervisory council to safeguard the interests of the trust and the testator's wishes.

Alternatively, the testator can also create a private foundation for estate planning. In this case, the appointed board of administrators will execute the testator's wishes.

25 | How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

The successor acquires the deceased's property with all the burdens it was subject to prior to the death of the deceased. The estate may devolve to the deceased's heirs by means of a will (testate succession) or, in the absence of a will, by operation of law (intestate succession). A succession may be partly testate and partly intestate. If the testator has disposed of only a portion of the inheritance, the remainder shall vest in his or her heirs-at-law, according to the order established in the law of intestacy. Since a will is revocable in nature, it shall only come into effect upon the death of the testator. This implies that a will may be revoked at any time before the testator's death.

Intestate succession takes place by operation of law, either in whole or in part, in the following circumstances:

- when there is no valid will;
- when the testator has not disposed of the whole of his or her estate;
- when the heirs instituted are unwilling or unable to accept the inheritance; or
- where the right of accretion among the co-heirs does not arise.

In this respect, the estate of the testator may devolve by operation of law in favour of the descendants, the testator's spouse, the ascendants, the collateral relatives, and, in the absences of these persons, the government, in the order provided by and according to the provisions of intestacy.

Challenge

26 | Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

Heirs and beneficiaries who are disappointed about the content of the will may have a right to the reserved portion of the deceased's estate, depending on their relationship with the deceased. In terms of Maltese law, only the deceased's spouse and children have a right to the reserved portion. The reserved portion is the share of a testator's estate that cannot be freely disposed of by the testator. It is a right in the form of a credit at 8 per cent of the value of the reserved portion. It is the right in the deceased's estate reserved by law in favour of the descendants and the surviving spouse of the deceased.

The rest of an individual's estate is known as the disposable portion. In situations where an individual leaves dispositions in the will that exceed the disposable portion, thus leaving disappointed heirs or beneficiaries, an abatement of the testamentary disposition exceeding the disposable portion may be brought into effect in virtue of the Civil Code. When the value of donations exceeds or is equal to the disposable portion, all testamentary dispositions shall be ineffectual.

The action for demanding an inheritance, a legacy or the reserved portion, whether in testate or in intestate succession, will lapse 10 years from the day of the opening of the succession; however, with regard to minors or persons interdicted, the action will lapse on the expiration of one year from the day on which they shall have attained majority or from when the interdiction shall have ceased.

CAPACITY AND POWER OF ATTORNEY

Minors

27 | What are the rules for holding and managing the property of a minor in your jurisdiction?

An individual is considered a minor if he or she has not attained the age of 18 years. Until the attainment of majority, the administration of the minor's property shall vest in his or her parents or legal guardians, who shall administer the property jointly. Acts of ordinary administration may be performed by either of the parents without the intervention of the other; acts of an extraordinary nature must be performed jointly by both parents.

Acts of extraordinary administration include:

- the alienation of movables by nature;
- the collection of capital that may become due;
- the granting of personal rights of enjoyment over immovable property;
- the acceptance of an inheritance, legacy or donation in the name of the child;
- the partition of movables by nature; and
- acts that require the authorisation of the court (see article 136(4) of the Civil Code).

The parents may not alienate immovables or movables by operation of law that belong to the minor, contract loans or other debt, hypothecate or pledge his or her property on his or her behalf, enter into suretyship or compromise or submit a dispute to arbitration unless it is absolutely necessary and the court authorises it. When an inheritance devolves on the minor, it shall be accepted by the parents with the benefit of inventory, unless it is dispensed with by the court. When the minor reaches the age of majority or upon the termination of parental authority, the parents are bound to render to the minor an account of the property and the fruits of those things of which they do not have the usufruct, and of the property and its administration in regard to things of which they have the legal usufruct.

Age of majority

28 | At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

An individual generally attains legal capacity for the purpose of holding and managing property upon attaining 18 years of age. Despite this, where a child has attained the age of nine years, an agreement would be valid insofar as it relates to the obligations entered into by any other individual in the minor's favour. This also applies to an individual who has attained the age of 14 but has not attained the age of 18, provided that he or she is still under parental authority or curatorship. However, minors cannot alienate or hypothecate their immovable property without the authority of the competent court. Upon reaching the age of 16, an individual can open a bank account in his or her own name, in which he or she can deposit and withdraw money, notwithstanding that the money is subject to the administration, usufruct or authority of any other person. Additionally, a minor who has attained the age of 16 may be emancipated to trade, in which case he or she would be considered as a major in regard to all matters relating to his or her trade or acts of trade.

Loss of capacity

29 | If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

When a person becomes incapable of managing his or her own affairs, a demand shall be made to the Civil Court (Voluntary Jurisdiction Section) to declare the person interdicted or incapacitated. The court will review the submitted application and will appoint a curator to manage and administer the property of the incapable person if it is satisfied that it is necessary to do so. The tutor is appointed for a period not exceeding three years. However, this period is subject to renewal upon approval of the court.

Malta also offers the possibility for a person of full age and capacity, in anticipation of his or her incapacity, to appoint a mandatory to administer his or her property and act on his or her behalf. This appointment shall be made in front of a notary public in the presence of two witnesses, after having procured a medical declaration stating that it is in the best interest of the person to draw up such a mandate. The coming into force and termination of the mandate depends entirely on the capacity of the mandator.

IMMIGRATION

Visitors' visas

30 | Do foreign nationals require a visa to visit your jurisdiction?

In 2007, Malta implemented the Schengen Acquis and subsequently the Visa Code. All third-country nationals listed in the Visa Code require a visa to enter Malta. Malta follows the procedure in the Visa Code for the issuance of visas. Malta is also party to the US Visa Waiver Program.

EU citizens enjoy the right to freedom of movement and can stay and work in Malta without requiring a visa or work permit.

31 | How long can a foreign national spend in your jurisdiction on a visitors' visa?

A foreign national in possession of a visitor's visa can spend up to 90 days in a six-month period in Malta. The visa may be a single, double or multiple-entry visa, depending on the length of travel and decisions made by the authorities.

High net worth individuals

32 | Is there a visa programme targeted specifically at high net worth individuals?

There are currently two highly solicited programmes offered by the Maltese government to high net worth individuals and their family members, as follows:

- citizenship by investment (IIP): the granting of Maltese (EU) citizenship with all its benefits upon contribution to the economic development of Malta, investment in the real estate and government bonds; and
- residency by investment (MRVP): the opportunity to reside indefinitely in Malta and travel freely within the Schengen area upon investment in real estate and contribution to the government.

33 | If so, does this programme entitle individuals to bring their family members with them? Give details.

These programmes entitle the main applicant to bring their family members with them, in particular, their spouse, children and parents

34 Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

Yes. Upon satisfying the qualifying criteria for the IIP and MRVP programmes, an individual, together with his or her dependants, will obtain a right to reside indefinitely in Malta. The right to reside indefinitely in Malta may, upon certain conditions being satisfied, be inherited by ascendants.

35 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

The IIP allows for the granting of citizenship by a certificate of naturalisation to foreign individuals and their families who contribute to the economic development of Malta. The process for naturalisation may take one to two years. The following are the minimum requirements to qualify for the programme.

Contributions

The contributions are as follows:

- main applicant: €650,000;
- spouse: €25,000;
- for each and every child under 18 years of age: €25,000;
- for each and every unmarried child between 18 years and 26 years of age: €50,000; and
- for each and every dependent parent above 55 years of age: €50,000.

Investment

A main applicant must invest in Malta an amount of at least €150,000 in, among other things, stocks, bonds, debentures, special purpose vehicles or other investment vehicles as may be identified from time to time, and retain the investment for at least five years.

Property

A main applicant must either:

- purchase a residential property in Malta having a minimum value of €350,000 and retain the property for at least five years; or
- lease a residential property in Malta for a minimum annual rent of €16,000 and retain the property for at least five years.

UPDATE & TRENDS

New legislation and current developments

36 Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

There are currently no proposals for new legislation or regulation in this area.

WHPARTNERS

Ramona Azzopardi

ramona.azzopardi@whpartners.eu

Aleksandr Belugin

aleksandr.belugin@whpartners.eu

Joselyn Teuma

joselyn.teuma@whpartners.eu

Level 5 Quantum House
75 Abate Rigord Street
Ta'Xbiex, XBX1120
Malta
Tel: +356 2092 5100
<http://whpartners.eu/>