



## OVERVIEW

Malta is becoming an increasingly popular fund jurisdiction as more funds are being domiciled on the island. One of the strong advantages of choosing Malta as an alternative jurisdiction for registering and licensing a fund is the positive culture of the practitioners and the accessibility and proactive development at the Malta Financial Services Authority (MFSA). Furthermore, Malta is also very cost-competitive when it comes to the fund set-up costs and ongoing fees. Malta also offers a competitive fiscal environment whereby no tax is imposed at either fund level and non resident shareholder level, as well as a comprehensive range of double tax treaties.

## RETAIL AND PROFESSIONAL INVESTOR FUNDS

The MFSA's regulatory regime through the Investment Services Act allows for the setting up of two principal classes of schemes:

- retail schemes, and
- qualifying professional investor funds (Q-PIFs).

## RETAIL FUNDS

Retail schemes are further sub-divided into two principal categories:

- Maltese non-UCITS schemes; and
- Maltese UCITS schemes.



A Maltese non-UCITS scheme may be set up as an open-ended or closed-ended scheme and may market its units to the general public in Malta without any limitation. The marketing of Maltese non-UCITS schemes to investors outside Malta is subject to compliance with the relevant authorisation or other regulatory requirements applicable in the jurisdiction where such investors are based.

A Maltese non-UCITS scheme is required to appoint an investment manager unless it is set up as a self-managed Maltese non-UCITS scheme. The custodian or depositary of a Maltese non-UCITS scheme should be based in Malta and licensed by the MFSA. The custodian of a Maltese non-UCITS Scheme is required to keep under custody the asset of the scheme and to carry out a monitoring function over the activities of the investment manager. The administrator of a Maltese non-UCITS scheme should be based in Malta.

A Maltese UCITS scheme is an open-ended scheme and is subject to the requirements of the EU UCITS Directive (Directive 85/611/ EEC). Like non-UCITS schemes, Maltese UCITS schemes may also market their units to the general public in Malta without any limitation.

A Maltese UCITS scheme is required to appoint a Maltese UCITS management company as its designated investment manager unless it is set up as a self-managed scheme. The custodian or depositary of a Maltese UCITS Scheme should also be based in Malta and licensed by the MFSA.

The custodian of a Maltese UCITS Scheme is required to keep under custody the assets of the scheme



Maltese UCITS scheme should preferably be based in Malta, although the MFSA may accept in exceptional circumstances a foreign based administrator provided that the said administrator is regulated in a recognised jurisdiction.

Unlike a Maltese non-UCITS schemes, a Maltese UCITS scheme is automatically eligible for marketing its units to the general public in any EEA state (other than Malta) provided that it follows the notification procedure stipulated in the UCITS Directive.

Typical UCITS / Non-UCITS funds include equity funds and bond funds. They also include money market funds which are investment funds that invest in short-term debt instruments such as treasury bills, commercial paper, bank deposits and other short-term paper with a maturity of one year or less. Amongst the retail funds, there are also the absolute return funds, which are managed with the aim of delivering absolute returns (i.e. more than zero) in any market condition.

## **QUALIFYING PROFESSIONAL INVESTOR FUNDS (Q-PIF)**

Another form of non-retail Collective Investment Schemes are the Qualifying Professional Investor Funds which are designed for professional and high-net worth investors. Recent Amendments to the regulations appertaining to Q-PIFs have denoted that a Q-PIF is only available to an investor who qualifies as a 'qualifying investor'. At a glance, this means that the investor must primarily invest a minimum of €100, 000 or its currency equivalent in the fund and that at no point can such investment



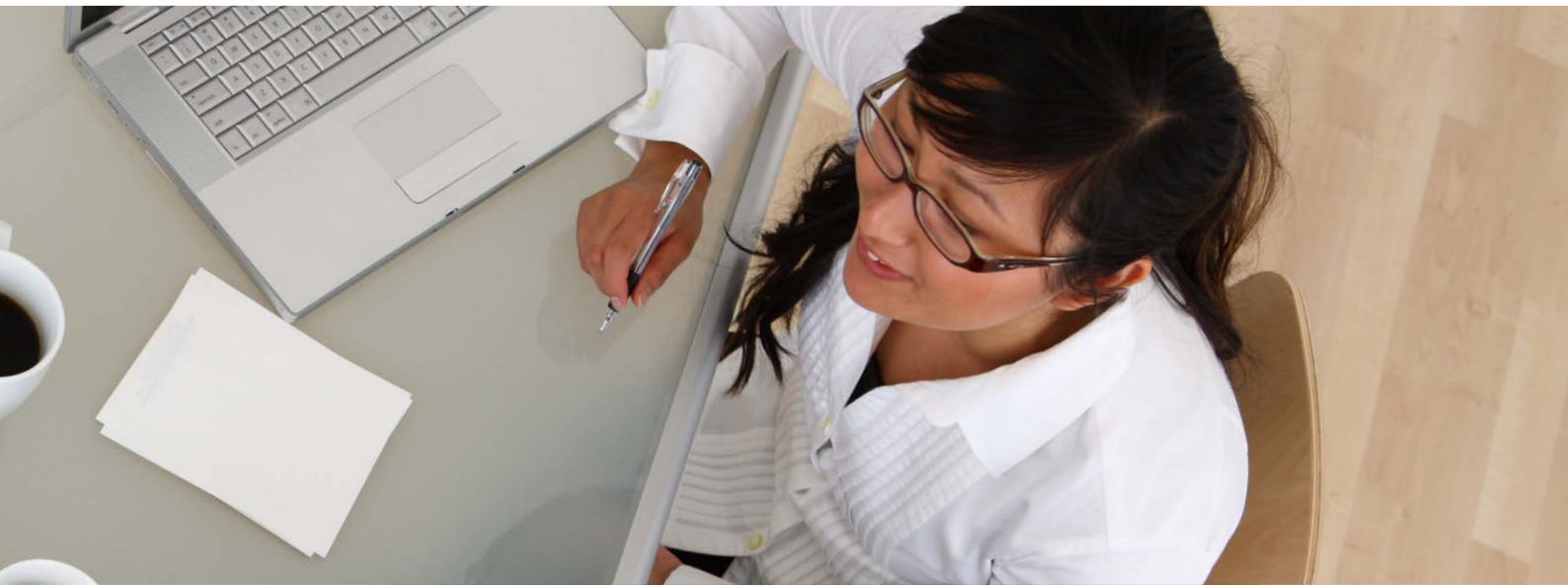
fall below the threshold, whether through redemption or otherwise. The investor in question must either be a body corporate or group which has/have net assets in excess of €750, 000, an unincorporated body of persons or an association which has net assets in excess of €750, 000, a trust where the net value of the assets are in excess of €750, 000, an individual whose net worth or joint net worth with such investor's spouse exceeds €750, 000 or a senior employee or director of a service provider to the Q-PIF. Professional indemnity insurances have a bearing on such amounts. A Q-PIF can be used as a fully-fledged hedge fund for a variety of assets such as securities, bonds, derivatives, money instruments, debt instruments and immovable property.

In all Q-PIFs, the board of directors and service providers must satisfy the MFSA 'Fit & Proper' test. All service providers may be established outside Malta provided that they are established and regulated in a recognised jurisdiction and a local judicial representative is appointed. Maltese Q-PIFs may also benefit from self-management.

A Q-PIF must issue an offering document which is a document intended to provide sufficient information to enable potential investors to take an informed investment decision. The offering document must be approved by the Q-PIF's board of directors (or its external manager, if appointed) and a written copy of their approval must be provided to the MFSA.

## **TAXATION OF FUNDS**

Malta's double taxation treaty network as well as its EU onshore status gives it a strong position as one of Europe's most favourable tax environments. Malta is the only EU Member State that operates a full imputation system of taxation whereby the tax paid by a company is credited in full to the shareholder upon a dividend distribution.



Maltese law distinguishes between prescribed and non-prescribed funds. This classification is important in order to establish whether, and how, tax is charged on investment income, capital gains, and dividend distributions. For income tax purposes, a fund or a sub-fund of a Collective Investment Scheme may be classified as a prescribed fund if the value of the assets situated in Malta is at least 85% of the value of the total assets. Other licensed funds are classified as non-prescribed funds.

### **Prescribed funds**

All income of Collective Investment Schemes is exempt from tax in Malta except for the withholding tax applicable to local investment income (as defined in the Income Tax Act) in the case of prescribed funds. The withholding tax rate is of 15% in the case of bank interest; and 10% in the case of other investment income.

Any other type of income or gains, i.e. income not falling within the definition of investment income (except for income from immovable property situated in Malta which is taxed at the normal rates of tax), received by a prescribed fund, is not subject to tax in the hands of the Collective Investment Scheme (CIS) Residents who hold securities, such as: shares or units in prescribed funds, which are listed on the Malta Stock Exchange, are not subject to tax on capital gains upon the transfer of such shares or units.

### **Non-prescribed funds**

A blanket income tax exemption applies to all income and gains derived by non-prescribed funds (except for income from immovable property situated in Malta which is taxed at the normal rates of tax).



## **CAPITAL GAINS**

Subject to certain conditions, capital gains realised on transfers or redemption of CIS units by non-resident investors, whether the units are held in a prescribed or a non-prescribed fund, are exempt from Maltese tax.

## **DIVIDENDS**

Distributions of dividends by a CIS, whether these are reinvested or otherwise, to non-resident investors (both individual and corporate) that are not owned and controlled directly or indirectly by individuals who are ordinarily resident and domiciled in Malta, are not subject to tax in Malta, whether by way of withholding or otherwise, upon distribution.

## **DUTY ON DOCUMENTS AND TRANSFER (STAMP DUTY)**

An exemption from stamp duty applies in respect of transfers of securities by a licensed CIS and in respect of transfers by investors of the units in a licensed CIS.

## **ACCESS TO DOUBLE TAXATION RELIEF**

Malta has an extensive network of double taxation treaties with around 70 treaties currently in force and another eleven treaties being negotiated. Treaty partners include many European countries as well as various Asian countries. A number of MoUs are also in place with various countries including South Africa and one on banking and securities with China.

## **VALUE ADDED TAX**

CISs are generally considered to provide exempt without credit supplies and therefore should not be required to



register for Maltese VAT purposes. The fund would typically not charge VAT and will not have a right to recover any VAT incurred. There is the possibility of recovering a portion of VAT incurred depending on the proportion of customers established outside the EU and various Asian countries.

## **INVESTMENT SERVICES OPERATIONS - FUND MANAGERS**

A fund manager would be liable to tax at 35% on its fee income. With the application of Malta's imputation system as described above, upon a distribution of a dividend by the fund manager to its shareholders. The recipient would be entitled to a 6/7<sup>th</sup>s tax refund i.e. the net tax cost would be 5%.

The shareholder of the fund manager may be another Maltese company, or may be located anywhere in the world. The dividend received by the shareholder would not be subject to any further tax because of the imputation credit, whilst the tax refund is exempt from taxation in Malta. If properly structured, the time lag between the date of payment of tax by the fund manager and the receipt of the refund by the shareholder, can be in as little as 14 days.

## **CONCLUSION**

One of the advantages of choosing Malta as an alternative jurisdiction for registering and licensing a fund is its flexible regulatory framework; its competitive fiscal environment together with the accessibility and proactive development at the MFSA, whereby appointments are encouraged and accommodated as early as possible to smooth out any difficult matters enabling the process to be shortened considerably.

Malta's tax provisions relating to the taxation of funds and investment services companies are designed to complement the Investment Services Act and to create a fiscal regime that allows for the rapid development of the funds industry in Malta.

## WHY NEXIA BT?

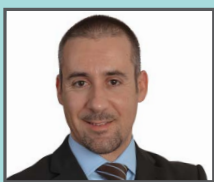
Established by Brian Tonna, managing partner, Nexia BT is a corporate and private client advisory, audit, accounting and tax firm. Our clients are local and international blue chip companies, financial and other institutions, SMEs, high-net-worth-individuals, the public sector and high-end organisations.

As a reputable organisation of over 20 years standing, and forming part of a worldwide network of independent business advisors, consultants, auditors and accounting firms present in over 120 countries, we are optimally positioned to offer global expertise. Along these years, we have built client loyalty around a credible reputation for delivering results whilst working to the highest professional standards.

Nexia BT's strength lies in the technically competent staff with experience across a varied range of industry sectors. We deliver solutions to our clients through a high calibre customised service reflected in the professional work approach and ethics of our staff and driven by our ethos 'Closer to you'. With the backing of this business approach, we confidently present you Nexia BT as your trustworthy, dependable and reliable partner in Malta.

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