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## Setting up a company in Malta

*Setting up a company is a very straightforward procedure and it usually takes two working days to be set up. The law that regulates limited liability companies and other commercial partnerships in Malta is The Companies' Act of 1995. This law provides for the setting up of both private limited liability companies as well as public limited liability companies.*

*A private company is one that, in its constitutive document, restricts the rights to transfer shares, limits the number of its members to fifty and prohibits any invitation to the public to subscribe for any shares or debentures of the company. A private company can further be established as a private exempt company or a single member private exempt company. By exclusion, a public company is defined as a company that is not a private company as defined.*

Statutory requirements for the formation of a Maltese limited liability company in Malta are as follows:

### ➤ Share capital

The minimum share capital is of €1,165. Shares can be 20% paid up i.e. approximately €250 (\$300). The share capital can be denominated in any currency.

### ➤ Directors

The minimum number of directors is one and there are no restrictions on the nationality and residence of the directors. We strongly recommend that for tax reasons, the majority of the directors on the board are persons who are residents of Malta. Body corporate, both Maltese and foreigners can be appointed directors of a Maltese limited liability company.

### ➤ Company secretary

Every company must have at least one company secretary. There are no restrictions on the nationality and residence of the company secretary. A company secretary must be a physical person, thus a body corporate cannot act as a company secretary.

### ➤ Shareholders

The minimum number of shareholders is two, although it is also possible to register single member companies where one shareholder owns all the shares in the company, provided certain conditions are satisfied. Body private individuals, companies and other entities having a separate distinct personality can hold shares in a Maltese company. There are no restrictions on the nationality and residence of the shareholders.

### ➤ Registered address

Every company must have a registered office in Malta. ACT can provide its own address as the company's registered address. From a purely Maltese tax and legal perspective, no physical presence in Malta is required however this may be required from an international tax perspective. Please contact us for advice.

### ➤ Exchange control

No exchange control rules and regulations exist in Malta since they have been abolished in view of Malta's EU membership. Thus funds can be transferred in and out of Malta without any restrictions. Banks may require supporting evidence for payments and receipts. Business can be conducted in any currency.

### ➤ Confidentiality

All company documents are public. However confidentiality can be maintained through the services of a fiduciary in which the name of the shareholder will not be disclosed on the company documents. In this case, submission of details of the ultimate beneficial owner is not required to be submitted to the Maltese Registry of Companies. Please speak to us for further information.

### ➤ Meetings

At least one Annual General Meeting is required in which the directors and shareholders are required to meet to approve the annual accounts. Meetings need not be held in Malta but it is highly recommended from an international tax perspective.

### ➤ Accounts

All limited liability companies in Malta must have their annual financial statements audited by a Certified Public Accountant who has a practicing certificate to audit financial statements of Maltese companies. Audited financial statements must be submitted on an annual basis to the Maltese Registry of Companies.

### ➤ Annual returns

All companies must submit, on a yearly basis, an annual return which includes details of the shareholders, directors and company secretary and any changes that might have been effected during the year.

### ➤ Taxation of Maltese companies

All companies in Malta are subject to tax at the rate of 35% on their world wide income and capital gains. Maltese companies can benefit from Malta's comprehensive double taxation treaty network and other unilateral provisions for the avoidance of double taxation found in the Maltese Income Tax Act.

#### ➤ Taxation of shareholders of Maltese companies

No tax is withheld upon the distribution of profits to the shareholders of Maltese companies, irrespective of the residence and nationality of the shareholders. In view of the imputation system applicable in Malta, no further tax is due in Malta by the shareholder on receipt of a dividend from a Maltese company. Refunds of tax are due to the shareholders upon receipt of a dividend. For further details, please read our Fact Sheet on the Taxation of Maltese companies or contact us on [info@act.com.mt](mailto:info@act.com.mt).

#### ➤ Records to be kept

All companies must keep records of all personal details of all shareholders, directors and company secretary together with dates of resignations, appointments and share transfers. All companies must present a share certificate to each shareholder and provide such shareholders with a dividend warrant on payment of a dividend. Maltese income tax legislation provides for the details and information that such a dividend warrant must include.

#### ➤ Employees

A Maltese company may operate an office in Malta and employ both skilled and professional expatriates in Malta. All employees working in Malta are subject to the payment of Maltese tax and national insurance contributions. The highest rate of tax on employment income is 35%, however there are certain sectors in which certain highly qualified expatriates pay a reduced rate of tax of 15%, provided certain conditions are satisfied. Currently, the sectors included are Gaming, Aviation and Financial Services. EU nationals do not require a working permit to work in Malta, while this is required for third country nationals. Please contact us for tax advice and for assistance with regards to applications for work permits in Malta.

#### ➤ Bank accounts

Maltese companies may hold bank accounts in Malta or anywhere in the world. We can assist you to set up both a corporate as well as a private bank account with one of the main banks in Malta. Such banks offer different services including cheque books, debit/credit cards, internet, telephone and phone banking, bank accounts in a wide choice of currencies and other traditional banking services. Such banks also offer international commercial and trading finance services.

#### ➤ Documentation required for company formation

Please contact us on [info@act.com.mt](mailto:info@act.com.mt) for a full list of documents required and details of fees and costs.

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## Taking up residence in Malta

*By virtue of its warm climate, attractive and historic places, safe environment and English-speaking population, Malta is one of the best places to take up residence; not to mention the relatively low cost of living and the advantageous tax regime it has to offer.*

*In order to reside in Malta for more than 3 months, an individual needs to apply for a residence permit from the Maltese Immigration Authorities. The permit is granted on specific grounds depending on whether the individual is an EU or a non-EU national.*

### ORDINARY RESIDENCE

Ordinary Residence applies to both EU/EEA/Swiss and non-EU/EEA/Swiss nationals. The qualifying criteria vary according to whether the applicant is an EU/EEA/Swiss national or a third country national.

Applicants for this residence programme are required to purchase or rent immovable property in Malta.

### EU/EEA/Swiss Nationals

Residency for an EU/EEA/Swiss national may be obtained on the basis of various schemes, the most common of which are being listed hereunder:

#### ➤ Economic Self-Sufficiency

This requires applicants to prove that they are financially stable and not in need of any financial support from the Maltese Government. Single persons must either have a minimum capital of €14,000 or a weekly income of €92.32 whereas married couples must either have a capital of at least €23,300 or a weekly income of €108.63. In addition, €8.15 is required for every dependent.

#### ➤ Employment / Business

Employment in Malta is another ground on which an EU/EEA/Swiss national may obtain ordinary residence in Malta. An individual can apply on this basis either if he is employed, self-employed or if he decides to set up a business in Malta.

#### ➤ Education

Foreign students, who visit Malta for educational purposes in any Private School, College or at the University of Malta, are granted a temporary residence permit covering their period of studies in Malta

A temporary residence permit is also granted to parents and to those persons who act as legal guardians of minor students. Such parents and guardians must prove that they are in receipt of regular and stable income and that they have a suitable place to live in.

#### ➤ Family Members

Family members of an EU/EEA/Swiss national applicant are granted the right to accompany the main applicant irrespective of whether or not they are EU/EEA/Swiss nationals. Extended relatives and partners must prove that they are dependent on the applicant. In addition partners must prove that they have been in a stable relationship for a minimum of 2 years.

#### ➤ Permanent Residence for EU/EEA/Swiss nationals

EU/EEA/Swiss nationals and their family members can apply for a **permanent residency** after having lived in Malta for a continuous period of five years. During these five years the applicant must have been economically self-sufficient, employed or self-employed or studying in Malta. Their presence in Malta should have been of at least 6 months in a calendar year.

#### Non-EU/EEA and Swiss Nationals (Third Country Nationals)

The grounds on which third country nationals may acquire ordinary residence are the following:

#### ➤ Employment

In order for a third country national to work in Malta, he/she needs to have an employment licence which is only granted if certain criteria are satisfied. Individuals whose profession is in demand, such as persons qualified in the financial services and information technology sector are more likely to acquire a work permit in Malta.

#### ➤ Self-Employment

In order for a third country national to be granted a permit to work in Malta on a self-employment basis, he/she would need to either:

- a) Make a capital investment of at least €100,000 within 6 months from the date of acquiring the employment licence. The capital investment must only consist of fixed assets that will be used to carry out the business as reported in the business plan that needs to be submitted together with the application. For this purpose, fixed assets include immovable property, plant and machinery but do not include payments such as rent, salaries and legal fees; or
- b) Be a highly-skilled innovator with a sound business plan (to be submitted with the application), who commits to employ at least three EEA/Swiss/Maltese nationals within eighteen months of setting up; or
- c) Be a person leading a project that has been formally approved by Malta Enterprise and formally notified by the latter to the Employment and Training Corporation; or
- d) Be the sole representative of an overseas company (with a sound reputation and established for at least three years abroad) opening a branch in Malta.

### Shareholders / Ultimate Beneficial Owners of a Malta Resident Company

Third country nationals may become ordinary residents in Malta if they are shareholders of a Malta company, provided that any one of the following conditions apply:

- The third country national must be the holder of a fully paid up share capital of at least €100,000 which may not be redeemed, reduced or transferred to a third party during the first two years following the issue of the employment licence; or
- He/she must invest in a capital expenditure of at least €100,000 to be used by the company in the carrying out of its activities. Capital expenditure has the same meaning as explained above; or
- The company in question is leading a project that has been formally approved by Malta Enterprise and formally notified by the latter to the Employment and Training Corporation.

### Long-Term Residence for Third Country Nationals

The long term residence status for third country nationals is very similar to that pertaining to EU/EEA and Swiss nationals. In fact in order for third country nationals to acquire long-term residence status, they must legally reside in Malta for a continuous period of five years. During these five years they must reside in Malta for at least 6 months during a calendar year and must not be absent from Malta for more than a total of 10 months throughout the five-year period.

A third country national who is granted a long-term residence status in Malta shall enjoy equal treatment as any other Maltese national in terms of access to employment and education amongst others. It is interesting to note that a third country national who has been granted long-term residence status by a Member State other than Malta may reside in Malta for more than three months to carry out an economic activity in either an employed or a self-employed capacity, provided that he/she is in possession of an employment licence, is pursuing studies or vocational training, or is engaged in other such activities.

### Education

Foreign students, who visit Malta for educational purposes in any Private School, College or at the University of Malta, are granted a temporary residence permit to reside in Malta during their period of studies in Malta.

The temporary residence permit is also granted to parents and to persons who act as legal guardians of minor students. Such guardians must prove that they are in receipt of regular and stable income and that they have a suitable place to live in.

### Family Members

A third country national who has been residing legally in Malta for at least 2 years, can make a request for his family members to reside in Malta. Family members mainly include spouses (21 years or more) and minor unmarried children. This can only be done if the third country national's intention is to permanently reside in Malta and that he/she can provide satisfactory accommodation to family members. He/she must have regular and stable means of resources being equivalent to the average wage in Malta plus another 20% of the average wage for each family member.

The reunited family has the right to work and study like the applicant and once the latter would have resided in Malta for five years, family members will be entitled to an autonomous residence permit. In the circumstance where third country nationals do not satisfy the above-mentioned conditions and are legally residing in Malta, they may still submit an application for a residence permit for their family members. Cases are considered on a case by case basis.

Partners of Maltese citizens are granted residence in Malta if the two have been in a relationship during the previous twenty four months and they receive a stable income of at least €8,885. In those cases where their relationship has lasted for at least 5 years, a residence permit for 3 years is issued.

### Temporary Residence

In exceptional circumstances, third country nationals may be granted a permit to reside in Malta for more than 3 months. This permit is granted on a case by case basis.

Individuals staying in Malta for some temporary purpose only with no intention of establishing their residence in Malta and who have not resided in Malta for a period longer than six months in a calendar year shall not be taxed in Malta on their foreign income and gains, whether these are remitted to Malta or otherwise. Such persons are liable to tax in Malta solely on Maltese sourced income and capital gains.

### Personal Income Tax for Ordinary Residents

Individuals who are ordinarily residents but not domiciled in Malta, are subject to income tax in Malta on any income and capital gains arising in Malta and on income arising outside Malta which is received in Malta. They are not subject to tax on foreign capital gains even if such gains are remitted to Malta.

Income derived by resident individuals is subject to tax at the following progressive rates:

SINGLE RATES		
Taxable Income €	Rate %	Deduct €
0-8,500	0	0
8,501-14,500	15	1,275
14,501-19,500	25	2,725
19,501-60,000	29	3,505
60,001 & over	35	7,105

MARRIED RATES		
Taxable Income €	Rate %	Deduct €
0-11,900	0	0
11,901-21,200	15	1,785
21,201-28,700	25	3,905
28,701-60,000	29	5,053
60,001 & over	35	8,653

PARENT RATES		
Taxable Income €	Rate %	Deduct €
0-9,800	0	0
9,801-15,800	15	1,470
15,801-21,200	25	3,050
21,201-60,000	29	3,898
60,001 & over	35	7,498

In order to qualify for the parent rates, the following conditions need to be satisfied:

- The parent must maintain under his/her custody a child or pay maintenance (established or authorised by courts) in respect of his/ her child;
- The child is not more than 18 years of age, or not over 23 years if receiving full-time instruction at a tertiary education establishment;
- The child is not earning an annual income of more than €2,400 from gainful occupation.

The above mentioned rates have been extended to EU/EEA nationals who have at least 90% of their worldwide income derived from Malta. Such individuals, even if they are not residents of Malta, can opt to be taxed at the above mentioned rates applicable for resident individuals.

Individuals who are neither residents nor domiciled in Malta are only subject to tax in Malta on any income and capital gains arising in Malta.

The following are the rates applicable to non-residents:

SINGLE RATES		
Taxable Income €	Rate %	Deduct €
0-700	0	0
701-3,100	20	140
3,101-7,800	30	450
7,801& over	35	840

### THE RESIDENCE PROGRAMME RULES 2014

By virtue of two Legal Notices, the Government of Malta has replaced the High Net Worth Individual Rules for EU/EEA and Swiss nationals with the Residence Programme Rules. These rules are to have retrospective effect as from 1 July 2013 and will apply to EU/EEA and Swiss nationals, with the exception of Maltese nationals.

#### Beneficiaries

A beneficiary under the programme is an individual who is not a permanent resident of Malta and who proves to the satisfaction of the Maltese tax authorities that:

- he is not a person who benefits under the Residents Scheme Regulations, the High Net Worth Individuals – EU / EEA / Swiss Nationals Rules, the High Net Worth Individuals – Non-EU / EEA / Swiss Nationals Rules, the Malta Retirement Programme Rules, the Global Residence Programme Rules, the Qualifying Employment in Innovation and Creativity (Personal Tax) Rules or the Highly Qualified Persons Rules;
- he holds a qualifying property holding;
- he is in receipt of stable and regular resources which are sufficient to maintain himself and his dependants without recourse to the social assistance system in Malta;
- he is in possession of a valid travel document;
- he is in possession of sickness insurance in respect of all risks across the whole of the European Union normally covered for Maltese nationals for himself and his dependants;
- he can adequately communicate in one of the official languages of Malta; and
- he is a fit and proper person.

#### Immovable Property

The minimum value if the beneficiary opts to acquire immovable property must be of at least €275,000. However, when the property is in the south of Malta or in Gozo, the minimum value can be of €220,000.

A beneficiary under the programme has the option to rent instead of buying immovable property. This minimum annual rental payment has to be at least €9,600 if the immovable property is situated in Malta or €8,750 if in Gozo or in the south of Malta. **Tax Implications**

Beneficiaries under the programme are subject to a flat rate of tax of 15%, with a minimum tax liability of €15,000 p.a. after allowing for any double taxation relief which the beneficiary may be entitled to. The minimum tax payable is due in advance every year, and shall be payable before the 30th of April.

Income and capital gains (with the exception of transfers of immovable property situated in Malta, where the 12% final withholding tax would apply) of the beneficiary, the beneficiary's spouse and children arising in Malta will be subject to a flat rate of tax of 35%.

#### Applications

An application in terms of the Residence Programme Rules can only be submitted to the Director General through the services of a person that qualifies as an Authorised Registered Mandatory (ARM), registered as such with the Director General.

Our firm is an Authorised Registered Mandatory and as such can assist you with your application for residency in terms of the Residence Programme Rules.

A non-refundable administrative fee of €6,000 has to be paid upon application, or €5,500 where the beneficiary has opted to acquire immovable property situated in the South of Malta.

### THE MALTA RETIREMENT PROGRAMME (MRP) RULES 2012

Introduced in 2012, the MRP Rules were targeted for pensioners who are EU/EEA/Swiss nationals (excluding Maltese nationals). The rules provide for a special tax status subject to a number of conditions being satisfied.

Beneficiaries are subject to tax at the beneficial tax rate of 15% on foreign sourced income that is received in Malta, by them or their dependants, subject to an annual minimum tax liability of €7,500 and an additional €500 for every dependant and special carer. Any income arising in Malta is subject to a flat rate of tax of 35%.

The conditions for eligibility are the following:

#### Remittances to Malta

Beneficiaries must be in receipt of a foreign pension all of which must be received in Malta. Such pension must constitute at least 75% of the beneficiary's chargeable income.

#### Immovable Property

The beneficiary must either purchase or rent immovable property in Malta or Gozo to serve as his habitual place of abode worldwide.

For the purposes of this scheme, minimum value for property purchased in Malta is of €275,000 while the minimum value for Gozo is €250,000. Minimum annual rent is of €9,600 per annum if the property is situated in Malta or at €8,750 per annum if it is situated in Gozo.

#### Health Insurance

Beneficiaries and their accompanying dependants should be covered by a health insurance policy with respect to all risks across the EU.

#### Domicile

Beneficiaries must not be domiciled in Malta and they should not have the intention to acquire their domicile in Malta within 5 years from acquiring residence in Malta under the MRP scheme.

#### Employment

Beneficiaries of the scheme cannot be in employment. They are nonetheless entitled to hold a non-executive post on the board of a company resident in Malta, or participate in activities related to any institution, trust or foundation of a public character, or any similar organisation or body of persons, also having a public nature, or be engaged in philanthropic, educational or research and development work carried out in Malta.

#### Minimum Stay Requirements

Beneficiaries of the MRP must spend at least 90 days per calendar year in Malta averaged over a 5 year period. In addition, they cannot spend more than 183 days in a calendar year in any other foreign jurisdiction;

#### Fit and Proper Test

Applicants must satisfy a fit and proper test prescribed by the pertinent Maltese authorities.

#### Special Tax Status

Applicants cannot benefit from any other Maltese scheme granting them a special tax status.

Applications must be filed through the services of an ARM. ACT is a licensed ARM that can assist you in applying for this special tax status. Together with the application, a fee of €2,500 is payable to the Maltese authorities.

The conditions mentioned above must be met on an annual basis meaning that the beneficiaries must retain their property or lease, meet the minimum stay requirements and renew their health insurance policies on an annual basis. ACT can assist you with the annual compliance obligations required under the MRP.

### THE GLOBAL RESIDENCE PROGRAMME (GRP) RULES

The Global Residence Programme rules were introduced in July 2013 to provide a special tax status to Third Country Nationals wishing to acquire residence in Malta.

The following are the conditions for eligibility:

#### Immovable Property

Individuals applying for the GRP scheme must either purchase or rent immovable property in Malta to act as their principal place of abode worldwide. The property purchased must be valued at €220,000 if it is situated in the South of Malta or in Gozo and at least €275,000 if it is situated in any other location in Malta. If the applicant opts to rent immovable

property, the minimum annual rent payable should amount to €8,750 with respect to properties situated in the South of Malta or in Gozo and €9,600 for a property situated in any other location in Malta.

The property purchased or rented must be solely occupied by the applicant, any family members and any special carers. The property cannot be let or sublet.

#### Special Tax Status

For non EU nationals to benefit from this special tax status, they cannot be beneficiaries of any other residency schemes currently in place in Malta.

#### Financial Resources

Applicants must be in receipt of stable and regular financial resources.

#### Special Carers

Where the beneficiary needs a special carer to accompany him/her to Malta, such carer must be an individual who has been working with the beneficiary for at least two years.

#### Minimum Stay Requirements

There is no requirement for a beneficiary to spend a minimum number of days in Malta, however beneficiaries cannot spend more than 183 days in a calendar year in any other foreign jurisdiction.

#### Fit and Proper Test

Applicants must satisfy a fit and proper test as set out by the Maltese Authorities.

### Submission of Applications

Applications for the GRP scheme must be submitted through an ARM. ACT is a licensed ARM and can assist you with the preparation and submission of the said application.

Together with the application, the applicant must pay an administrative fee to the Maltese authorities amounting to €5,500 where the beneficiary acquires or rents immovable property in Gozo or in the South of Malta and €6,000 in all other cases.

### Income Tax

Beneficiaries of the scheme are subject to a reduced rate of tax of 15% on all foreign income remitted to Malta subject to a minimum tax liability of €15,000 per year after claiming any double taxation relief. Any income arising in Malta is subject to tax at 35%.

### Inheritance of the Special Tax Status

In the circumstances where the permit holder passes away, his tax status can be transferred to one of his dependents. Such dependents should satisfy all the conditions under the GRP scheme and must either have inherited the qualifying immovable property or rented the immovable property immediately after the beneficiary's demise.

### DOUBLE TAXATION RELIEF

Resident individuals are entitled to claim one of the various forms of relief from double taxation, namely, treaty relief, unilateral relief and the Commonwealth income tax relief. These types of relief ensure that the same income will not be subject to tax twice in two different jurisdictions.

The most common type of relief is the treaty relief, given that Malta has concluded double tax treaties with more than 65 countries. Malta's treaties are mainly based on the OECD Model Convention and relief is granted by means of the credit method meaning that the foreign tax suffered on the income is granted as a credit against the Maltese tax liability on such income.

In the absence of a treaty, the unilateral relief can be availed of. This type of relief works similarly to the treaty relief. The Commonwealth income tax relief applies to tax suffered in Commonwealth countries.

### BUYING PROPERTY IN MALTA

EU citizens can freely purchase their first property in Malta to serve as their primary residence without the necessity of obtaining a permit (known as the AIP permit). This also applies in those circumstances where one of the spouses is an EU national and the other is a non-EU national.

An EU national can also acquire an immovable property without an AIP permit where such property is used to carry out one's business activity or for the supply of services by such person. A declaration reflecting the purchaser's intention for the acquisition should be inserted in the relative contract of purchase. After being resident in Malta for at least 5 consecutive years, EU citizens may freely purchase any number of immovable properties in Malta.

On the other hand, non-EU citizens must obtain an AIP permit in order to acquire immovable property in Malta. Both EU and non-EU citizens may freely purchase immovable property situated in certain areas known as Special Designated Areas.

### IMPORTATION OF HOUSEHOLD GOODS

Individuals who become resident in Malta may import their household goods and furniture into Malta without incurring any VAT and import duties. Third country nationals may be asked by the customs authorities to pay a deposit or provide a bank guarantee for the VAT/duty in question. The deposit will be refunded upon providing an evidence of stay in Malta for a cumulative period of 200 days within a period of 365 days.

### INHERITANCE TAX

Malta does not have any inheritance tax. Nonetheless, the heirs of the deceased person are liable to pay stamp duty upon the inheritance of shares in Malta companies and immovable property situated in Malta.

Stamp duty payable amounts to 5% in the case of immovable property situated in Malta and shares in property companies, while a duty of 2% is payable on the acquisition of shares which are not property companies. There are various exemptions and exceptions which are applicable.

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