

FACT SHEET 3 – CONTINUATION OF COMPANIES

The Maltese Companies Act, 1995 allows for the continuation or re-domiciliation of foreign companies to Malta and also of Malta registered companies to other foreign jurisdictions. The jurisdictions to which and from which re-domiciliation is presently permitted include EU Member States, EEA Countries and OCED Member States.

Re-domiciliation of a foreign company to Malta

The Companies Act, 1995 provides the procedure which a foreign company that wishes to re-domicile to Malta must follow. One of the conditions laid down in the relative regulations is that the foreign company must be authorized to re-domicile by its charter, statute or memorandum and articles of association or by any other instrument constituting or defining the same company. It must therefore be confirmed that the statutory documents of the foreign company allow for its continuance in Malta.

In order to re-domicile to Malta, a request must be made by the foreign company to the Maltese Registrar of Companies. This request must be accompanied by certain documents, which include the following:

- A resolution or equivalent document of the shareholders of the foreign company authorizing it to be registered as being continued in Malta;
- A copy of the constitutive document of the foreign company which is to serve as a basis of preparation of the Memorandum and Articles of Association, which is to be prepared in accordance with the provisions of Maltese law;
- A certificate of good standing or an equivalent document in respect of the foreign company issued by the competent authority in which the foreign company was formed;
- A declaration signed by at least two directors of the foreign company, unless the Board of Directors is composed of one, confirming the following:
- The name of the foreign company and the name under which it is to be continued in Malta;
 - The jurisdiction under which it is incorporated;
 - The date of incorporation;

- The decision having the foreign company registered as continuing in Malta;
 - The communication of the foreign company to the relevant authority of the country where it is incorporated informing them of its decision to be registered to continue in Malta;
 - That no proceedings for breach of laws of the country or jurisdiction of incorporation have been commenced against such foreign company.
- A declaration signed by at least two directors confirming the solvency of the foreign company and that they are not aware of any circumstances which may negatively affect, in a material manner, the solvency position of the company within a period of twelve months;
 - A list of directors of the foreign company as well as the details of the company secretary, if any, or of the persons vested with the administration or the representation of the foreign company;
 - Such material as the Registrar may require in order to satisfy himself that:
 - Such request is permitted by the laws of the country or jurisdiction where the foreign company has been incorporated, and
 - The consent of such number or proportion of shareholders, debenture-holders and creditors of the foreign company as may be required by the laws of the country or jurisdiction where the foreign company has been incorporated.
 - Payment of registration fees, which vary depending on the authorised share capital of the foreign company.

Within a period of six months from such a request, the foreign company must submit documentary evidence to the Registrar that it has ceased to be a company registered in the country or jurisdiction where it had been initially formed and incorporated or registered. On submission of such evidence, the company shall surrender to the Registrar, the Provisional Certificate of Continuation, and the Registrar shall issue a Certificate of Continuation confirming that the company as been registered as continuing in Malta.

Effects of redomiciliation

Once the Registrar of Companies issues the company with a Certificate of Provisional Registration, the following are the most salient consequences thereof:

- The company will be *deemed to be a company incorporated in Malta*, in terms of the Companies Act, 1995, by its original name, as from the date of the Certificate of Provisional Registration;
- Continuation will not create a new legal entity – the company shall retain, and continue to Malta with, all its assets, rights, liabilities and obligations intact;
- The company will henceforth be regulated by its Constitutive Document (now in compliance with the Companies Act), the Companies Act and Maltese law generally;
- The company is required to provide documentary evidence to the effect that it has been struck off the register in the country in which it was originally incorporated within 6 months of the date of issue of the Certificate of Provisional Registration.

Malta structures to be used

Effectively there are two structures in which the company is to be organised from a Maltese tax perspective prior to continuation. These are the International Trading Company and the Holding Company (Fact Sheets 1 & 2 refer).

Tax implications on continuation

- With effect from the date of the company's Certificate of Provisional Registration, the company is 'deemed to be incorporated in Malta' in terms of law. The company therefore becomes domiciled and resident in Malta in terms of the Income Tax Act.
- No tax or other levy is charged upon continuation of the company to Malta;
- Any undistributed profits of the company (unless, exceptionally, charged to tax in Malta at an earlier stage) will be allocated to the Company's Untaxed

Account on the date of continuation to Malta. A dividend distributed by the company from its Untaxed Account to a non-resident shareholder is tax exempt in that shareholder's hands and no disclosure thereof need be made.

- The company may fully benefit, as a Malta tax resident, from Malta's network of 48 mainly OECD-based Double Tax Treaties (Fact Sheet 4 refers).
- Shares in the company may be held through a licensed nominee shareholder or through a trust.
- Foreign-owned overseas-based Maltese companies are presently not required to register for VAT.

Re-domiciliation of a Maltese company overseas

A request may be made by a company registered in Malta to the proper authorities in the country or jurisdiction in which it wishes to be re-domiciled so long as this is permitted. This may be done after the appropriate consent is obtained from the Maltese Registrar of Companies.

The request to the Registrar must be made in the prescribed form and must also be accompanied by a declaration of the directors containing the details of the company, the country or jurisdiction to which it wishes to be re-domiciled to and the date of this re-domiciliation.

Consent will only be given by the Registrar so long as the regulations in force are complied with and where it is satisfied that the company is not involved in any proceedings for dissolution, insolvency etc. Furthermore the consent of the Registrar shall not take effect before a period of three months from the date of publication of a relative notice in the Government Gazette has elapsed. This notice allows any creditors of the company to object to the proposed re-domiciliation.

Once the authority in the country or jurisdiction in which the company has been continued issues the relevant certificate of continuation and a copy thereof is delivered to the Registrar, then the company will be struck off the Maltese register of companies.

The information contained in this fact sheet has been prepared by Busuttil & Micallef – Certified Public Accountants · Tax Consultants, Malta. It is of a general nature and is not intended to address particular circumstances of an individual or entity. The fact sheet is intended to provide the reader with an overview of the tax planning and other opportunities in Malta. This information is also subject to any changes that may occur to the relevant legislation.

No one should act upon this information without obtaining appropriate professional advice.