



QUBE SERVICES LIMITED

TRUSTS IN MALTA

Introduction

The term “Trust” refers to the legal relationship created by a person, the “Settlor”, when assets have been placed under the control of a “Trustee” for the benefit of a “Beneficiary” or for a specific purpose.

The assets constitute a separate fund or patrimony and are not part of the Trustee’s own estate, although the legal title to the assets will be in the name of the Trustee.

The Trustee has the power and duty (and is accountable for the way he exercises these) to manage, use or dispose of the assets in accordance with the terms of the Trust and any special duties imposed upon him by the law which governs the Trust.

Trusts may be described as flexible arrangements that provide a number of benefits and may be used for a variety of objectives. Typical examples include will trusts for a testator’s children and family, pension trusts (conferring benefits on employees and their families), unit trusts (collective investment vehicles) and trusts set up for a charitable purpose.

Some trusts allow the Trustee to exercise discretion when distributing capital and/or income to the beneficiary/ies (discretionary trusts), whilst other trusts do not confer such discretion between beneficiaries (fixed interest trusts).

The relevant legislation in Malta

Malta introduced trust legislation in 1988 when Parliament enacted the Offshore Trusts Act 1988 which was designed to provide for the creation of trusts for non-resident Settlers and the Recognition of Trusts Act 1994, which enabled Malta to ratify the Hague Convention on the Law Applicable to Trusts and their Recognition.

The legislation was substantially overhauled in 2004 and there is now a fully-fledged integration of trusts in Maltese law through the Trusts and Trustees Act, Cap. 331.

A Trust may come into existence, unilaterally or otherwise, by oral declaration, or by an instrument in writing including by a will, by operation of law or by a judicial decision

The Settlor may be a Beneficiary or one of the Beneficiaries as well as a Trustee or co-Trustee but care is to be exercised so as not to arrive at a situation where the Trust is considered as a sham.

The impact of taxation legislation in Malta

The impact of taxation on Trusts, Trustees and Beneficiaries is provided for in the Income Tax Act, Cap. 123 of the Laws of Malta and will vary with the nature of the assets and, more importantly, on the timing of distributions of the Trust income and the residence status of the Beneficiaries.



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Income attributable to a Trust is not charged to tax in the hands of the Trustee if it is distributed to a Beneficiary. Therefore on distribution of income to a Beneficiary, tax is charged directly to the Beneficiary. As a consequence, when all the Beneficiaries of a trust are not resident in Malta and when all the income attributable to a Trust does not arise in Malta, there should be no tax due by the Trust in Malta nor by the Beneficiary in Malta since non-residents are not subject to tax in Malta on income not arising in Malta.

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