

Malta



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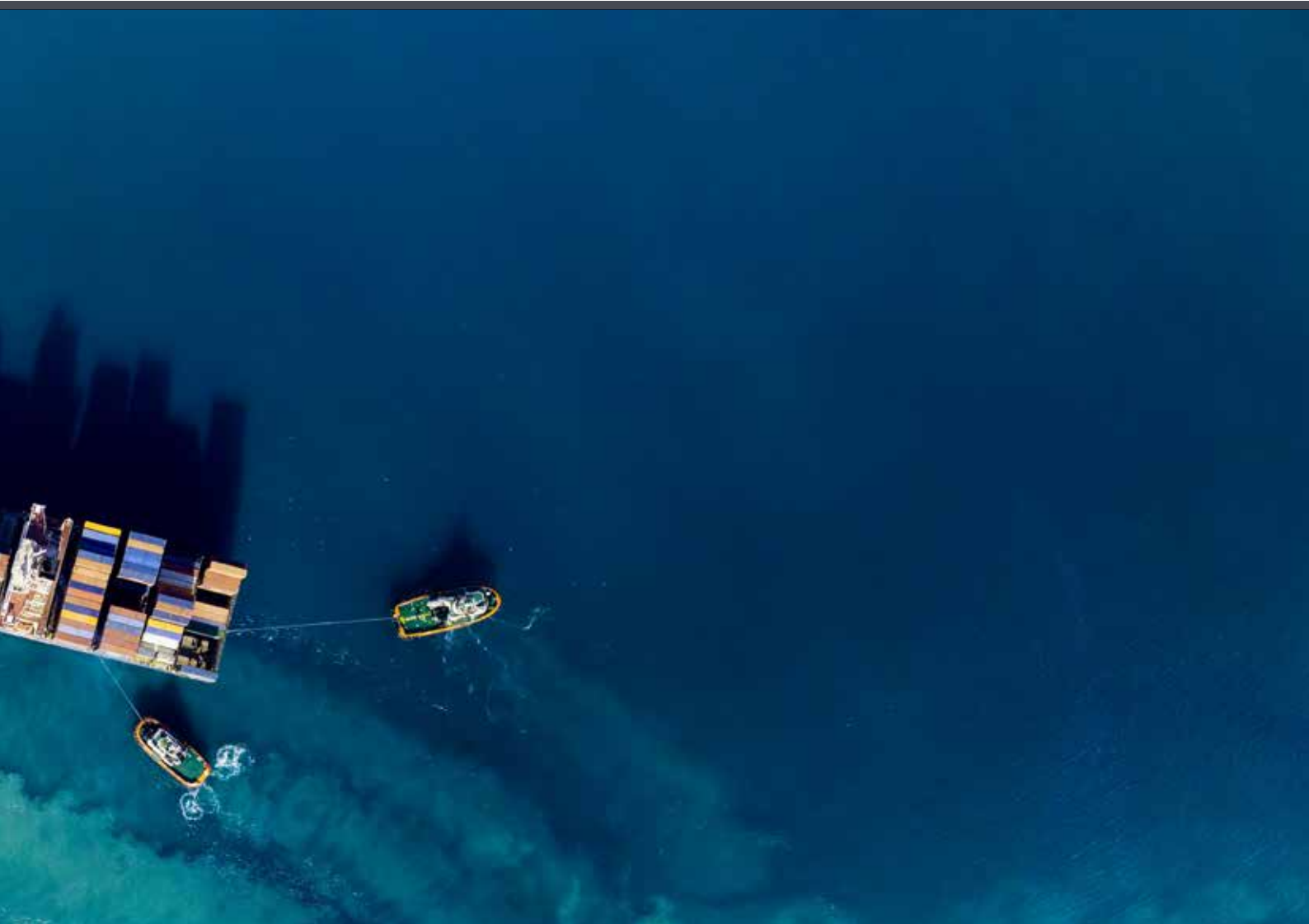
1. Types of tax

Currently, Maltese legislation does not contemplate any gift taxes or specific estate and inheritance taxes *per se*.

Nevertheless, income tax on capital gains is levied on certain donations and duty on documents and transfers is due upon the inheritance of certain assets including real estate, marketable securities and interests in a partnership.

1.1 Inheritance tax

There is no inheritance tax in Malta.



1.2 Gift tax

There is no gift tax in Malta. Nevertheless, from an income tax perspective, the definition of a “transfer” put forward by the Income Tax Act, Cap. 123 of the Laws of Malta (ITA) encompasses “donations.” Therefore, donations of chargeable assets, including immovable property, business, intellectual property, securities in companies, interest in a partnership and a beneficial interest in a trust fall within the purview of “income tax on capital gains.” In case of immovable property situated in Malta or any right thereon, the “property transfer tax” (PTT) would apply instead.

1.3 Real estate transfer tax

Upon the transfer of immovable property, the transferor will either be subject to income tax on capital gains or PTT; each form of tax is calculated differently. Income tax on capital gains and PTT are separate and distinct, however, both regulated by the ITA. For either purposes, however, the term “transfer” as provided for in the ITA excludes “transfers causa mortis,” to the effect that transfers of immovable property by means of inheritance fall outside the scope of both income tax on capital gains and PTT.

1.4 Endowment tax

There is no endowment tax in Malta.

1.5 Transfer duty

Duty on documents and transfers in Malta is a transaction-based tax that is due upon the transfer – including a transfer *causa mortis* and a donation – of dutiable property where the transaction document is either executed or used in Malta. Dutiable property include immovable property situated in Malta or any real rights thereon, marketable securities and interests in a partnership.

Causa mortis

Duty on documents and transfers (at the rates identified in “1.5 Transfer Duty” above) is due upon the inheritance of real estate, marketable securities and interest in a partnership.

1.6 Net wealth tax

There are no net wealth or net worth taxes in Malta.

2. Who is liable?

2.1 Income tax on capital gains/PTT

In case of a “donation” that falls within the purview of income tax on capital gains/PTT, the donor would be liable to settle the income tax on capital gains/PTT due on the transfer.

2.2 Duty

In theory, the liability to duty is dependent on whether the transfer is a transfer *inter vivos* or a transfer *causa mortis* and whether the transfer is affected by a public deed. The relevant provisions may be summarized as follows:

- ▶ In the case of a transfer *causa mortis* of an asset that does not involve a public deed, the liability to pay the duty would fall on the transferee.
- ▶ In the case of a transfer *inter vivos* – such as a donation – of an asset that does not involve a public deed, the transferor and transferee would be jointly and severally liable to pay duty due.
- ▶ In the case of a transfer that involves a public deed, the notary publishing the relevant deed would be jointly and severally liable with the transferee and, where applicable, the transferor, to pay the duty due.

In practice, however, the duty is generally settled by the transferee.

3. Rates

3.1 Income tax on capital gains

Any deemed capital gains derived from a taxable donation would be amalgamated with the donor's other income and brought to charge at progressive tax rates from 0% to 35%. The capital gain is equal to the transfer value, which in the case of a donation is likely to be equal to the market value of the shares transferred through the application of a prescribed formula, less the cost of acquisition and a deduction for inflation in cases where the book value of immovable property is replaced by its market value.

The applicable tax brackets depend on whether the individual is a resident or nonresident for Maltese income tax purposes. In the case of resident individuals, the tax rates are also affected by whether the taxpayer is taxable at the single, married or parent rates, with different tax-free thresholds for each category.

3.2 PTT

The default rate of PTT is 8%, and it is levied on the transfer value of the immovable property, that is the higher of the consideration, where applicable, and the market value of the immovable property being transferred. Nevertheless, the relevant rules contemplate other rates, including:

- ▶ 12%, levied on the excess of the transfer value over the acquisition value, when the immovable property being transferred was originally inherited by the transferor after 24 November 1992 or donated to the transferor more than 5 years beforehand
- ▶ 7%, levied on the transfer value, where the immovable property being transferred was inherited by the transferor before 25 November 1992 or inherited after 24 November 1992 and the property is being transferred by means of a judicial sale
- ▶ 5%, levied on the transfer value, where the immovable property being transferred falls under the definition of restored property in accordance with Malta Environment and Planning Authority (MEPA) or situated in an urban conservation area. This rate also applies to transfers of property originally acquired by the transferor before 1 January 2004
- ▶ 5%, levied on the transfer value, where the immovable property being transferred does not form part of a project, and is transferred within five years from the date of acquisition or a restored immovable property which is situated in an urban conservation area or scheduled by MEPA
- ▶ 2%, levied on the transfer value, where the immovable property being transferred is the transferor's sole ordinary residence, the transfer is done within three years after the date of the acquisition and the transferor does not own any other residentially property at the time of the transfer

With effect from 1 January 2020, a final tax of 15% applies on all gains or profits derived on the first EUR100,000 of a consideration received for the transfer of a promise of sale agreements.

3.3 Duty

Duty on documents and transfers amounting to 5% on the transfer value of immovable property in Malta or any real right over an immovable property. The transfer value is the value of the consideration for the transfer of the immovable property, where applicable, or on the market value of the immovable property – generally determined through an architect's valuation, whichever is the higher.

Duty is also levied upon the acquisition of marketable securities and interests in certain partnerships. Generally, a 2% duty is applied on the transfer value of the marketable securities and the interest in the partnership being transferred. The transfer value is the value of the consideration, where applicable, and the real value of the marketable securities or the interest in the partnership being transferred, in either case as determined through a prescribed formula, whichever is the higher.

The rate is increased to 5% in case where the company or partnership in which the marketable securities or interest are held derives, directly or indirectly, 75% or more of its value from immovable property situated in Malta or any real rights thereon. Several exemptions for companies having the majority of their business interests situated outside of Malta are envisaged.

4. Exemptions and reliefs

4.1 Income tax on capital gains/PTT

No income tax on capital gains/PTT is levied on the donation of chargeable assets from an individual to his spouse, descendants and ascendants in the direct line and their relative spouses, or in the absence of descendants, to his brothers and sisters and their descendants.

4.2 Duty

The Duty on Documents and Transfers Act (DDTA) provides for a number of exemptions and rebates when calculating duty on donations and transfers *causa mortis*, including the below. No duty shall be charged on the transfer of immovable property:

- ▶ Between persons who are, or were formerly, married to each other, on either the assignment of the immovable property between them consequent to a consensual or judicial separation or to a divorce or the dissolution of the community of acquests existing between them
- ▶ Between persons who are married to each other on any transfer *inter vivos* of the ordinary residence or part thereof of any or both of the spouses
- ▶ On the death of one spouse, on any partition of any property held in common between spouses the surviving spouse and the heirs of the deceased spouse
- ▶ Between cohabitants whose cohabitation is enrolled by means of a public deed under the Cohabitation Act, 2020, when such assets are assigned between them consequent to the dissolution of the cohabitation
- ▶ Between cohabitants whose cohabitation is enrolled by means of a public deed under the Cohabitation Act, 2020, on the dissolution of the community between said cohabitants
- ▶ Between cohabitants whose cohabitation is enrolled by means of the public deed under the Cohabitation Act, 2020, whether the community of assets exists between them or otherwise, on any transfer *inter vivos* of the cohabitation home or part thereof, of any or both of the cohabitants

- ▶ On the death of one of the cohabitants, whose cohabitation is enrolled by means of a public deed under the Cohabitation Act, 2020, on any partition of any property held in common between the cohabitants, whether it is the community property or otherwise, between the surviving cohabitant and the heirs of the deceased cohabitant
- ▶ On a transfer of an undivided share of a dwelling house, from the heirs of the deceased co-owner to the other co-owner, where the dwelling house was, immediately before the transfer, co-owned by two individuals
- ▶ On the first EUR250,000 of the value of the property transferred via a gratuitous title by a person to his descendants in the direct line who acquire immovable property for the purpose of establishing therein, or constructing thereon, their sole, ordinary residence. A reduced rate of 3.5% duty applies on the remaining value thereof, provided that this is the first transfer by such a person to such a descendant and properly declared
- ▶ On the first EUR35,000 where a person acquires by way of an inheritance a dwelling house which was the ordinary resident of the late person. Moreover, where the dwelling house so acquired was also occupied by the transferee *causa mortis* at the time of the transfer, the duty payable on the part of the transfer value between EUR35,000 and EUR200,000 shall be charged at 3.5%. If the dwelling house was occupied by the transferee *causa mortis* but was not the ordinary residence of the late person, the rate of 3.5% shall apply for the first EUR200,000
- ▶ Upon a transfer *causa mortis* of a dwelling house, which was, at the time of the transfer and during the previous years, the ordinary residence of the later person, and where the transferee *causa mortis* is the transferor's descendants in the direct line
- ▶ No duty shall be charged on the transfer of marketable securities:
 - ▶ Between persons who are, or were formerly, married to each other, on either the assignment of the immovable property between them consequent to a consensual or judicial separation or to a divorce or the dissolution of the community of acquests existing between them
 - ▶ Between persons who are married to each other on any transfer inter vivos of the ordinary residence or part thereof of any or both of the spouses
 - ▶ That are listed on the Maltese Stock Exchange
 - ▶ In a company that has applied for and obtained a blanket duty exemption in terms of article 47 DDTA, such as companies which, among other conditions, are owned more than 50% by non-Maltese residents and carry on or intend to carry on more than 90% of their business outside of Malta
 - ▶ On the first EUR150,000 if the marketable securities are held in a family business that carries on a business if, among other, the family business does not own any immovable property other than immovable property consisting of a commercial tenement, which has been used for a period of three years

Duty will be levied at the reduced rate of 1.5% upon the transfer by means of a gratuitous title from the individual to his spouse, descendants and ascendants in the direct line and their relative spouses, or in the absence of descendants to his brothers and sisters and their descendants of:

- ▶ Marketable securities issued by a company
- ▶ A commercial tenement that had been used in a family business for a period of at least three years preceding the transfer.

Furthermore, no income tax and no duty on documents and transfers shall be payable on the first EUR750,000 of the transfer value of any transfer of 1) vacant building, which except for other conditions, its construction was completed at least 20 years before the date of the transfer, has been vacant on the date of transfer and has been vacant for a period of at least 7 continuous years immediately preceding the transfer date or 2) property situated within an urban conservation area at the time of transfer, which is supported by a declaration confirming this and confirmed by a certificate issued by the planning authority established under the Development Planning Act. The transfer has to be made on or after 12 October 2021 but not later than 31 December 2024. Where the transfer value exceeds EUR750,000, the income tax and the duty on documents and transfers on the excess shall be chargeable at the rates that apply in terms of the relevant provisions of the Income Tax Act and the Duty on Documents and Transfers Act.

5. Filing procedures

5.1 Income tax on capital gains/PTT

If the donation is subject to income tax, the transferor would be bound to remit to the Malta Tax and Customs Administration provisional tax of 7% of the transfer value within 15 days from the date of transfer. The provisional tax payment must also be accompanied by the submission of the prescribed paperwork. Moreover, the transferor would also be required to declare the deemed capital gain in his/her personal income tax return. The personal income tax return is submitted (together with the settlement tax) to the Maltese tax authorities on an annual basis by not later than 30 June of the year following the end of the calendar year. Any provisional tax paid would be credited against the tax due for the particular year, with any excess available as a refund.

In case of PTT, the notary publishing the deed shall be responsible for the collection and remittance of the PTT to the Commissioner for Tax and Customs Revenue together with the submission of the prescribed paperwork.

5.2 Duty

In case of a donation, the transferee would be bound to submit certain paperwork with the Malta Tax and Customs Administration together with a cheque covering the duty payable within 15 working days from the date of transfer.

Conversely, the succession of immovable property must be made by means of a deed of Declaration Causa Mortis published by a Notary Public and duly registered in the Public Registry of Malta. Each heir may go to a Notary Public and make a declaration Causa Mortis for his share only. The heirs are not obliged to make the declaration Causa Mortis together. The declaration Causa Mortis shall contain a statement by the heirs stating the true value of each property or share thereof that is being transferred to them. In turn, the notary would be bound to submit the relevant paperwork together with a cheque covering the relevant duty payable, where applicable, within 15 working days from the receipt of the deed containing the relevant declaration. Moreover, to benefit from rebates on stamp duty, a deed of Causa Mortis must be concluded within six months from the date of death. Failure to conclude the Causa Mortis deed within one year from the date of death will result in the incurring of interest on the amount of tax due at the rate of 8% per annum.

The exemptions require the notary declaring on the relative deed that the property in question came to the heirs of the deceased person through a transfer *causa mortis* and that a complete declaration has been duly made in accordance with Article 33 of the DDTA.

As for transfer *causa mortis* of marketable securities and interests in a partnership, the transferee *causa mortis* would be required to furnish the Malta Tax and Customs Administration with the relevant paperwork accompanied by a cheque covering the duty payable within 15 working days from the transfer. Moreover, the transferee *causa mortis* would also be required to give a notice to the Commissioner for Tax and Customs in case where the shares or interests being transferred *causa mortis* are in a company or a partnership:

- ▶ Registered in Malta; or
- ▶ Registered outside of Malta but having, directly or indirectly, more than 50% of its business interests situated in Malta and only if such a transferee *causa mortis* is an individual who is ordinarily resident and domiciled in Malta.

6. Assessments and valuations

6.1 Assessments

All paperwork submitted with the Commissioner for Tax and Customs in relation to donations and transfers *causa mortis* are subject to the usual vetting by the department's assessors and an internal departmental board to establish the correctness of the workings and the values attributed to the immovable property being transferred.

6.2 Valuation

A transferee *inter vivos* or *causa mortis* of immovable property situated in Malta or any real rights thereon may produce to the notary a professional architect's valuation for the purpose of determining the value of the immovable property in question. The relevant report shall be annexed to the relevant deed. The Commissioner retains the right not to accept a valuation made by an architect, but if the transfer value declared in the relevant deed is not less than 85% of the value provided by the architect, the duty payable shall be computed with reference to the higher of the value declared in the relevant deed.

Moreover, if the company whose shares are being transferred owns immovable property situated in Malta, then for the purposes of determining the taxable base, where applicable, and dutiable base for the purposes of income tax on capital gains and duty respectively, the book value of such immovable property must be replaced by the market value thereof as determined by an architect's valuation. Moreover, in certain cases, the transferor and/or the transferee may also be allowed to determine the value of the shares being transferred based on a share valuation prepared by an independent expert. Such a share valuation shall include a detailed description of the methods of valuation that have been used in determining the market value of the shares and the endorsement thereof is at the Commissioner's discretion.

7. Trusts and foundations

Maltese law caters both for trusts and foundations.

As defined by law, a trust exists where a person ("a trustee") holds, as owner or has vested in him property under an obligation to deal with that property for the benefit of persons ("the beneficiaries"), whether or not yet ascertained or in existence, which is not for the benefit only of the trustee, or for a charitable purpose, or for both such benefit and purpose aforesaid. The trust property shall constitute a separate fund owned by the trustee, distinct and separate from the personal property of the trustee and from other property held by the trustee under any other trust. Trusts create fiduciary obligations upon the trustee in favor of the beneficiary of the trusts.

On the other hand, a foundation is an organization consisting of a universality of things constituted in writing, including by means of a will, by a founder or founders whereby assets are destined either:

- a. For the fulfillment of a specified purpose
- b. For the benefit of a named person or class of persons, which are entrusted to the administration of a designated person or persons.

The patrimony, namely assets and liabilities, of the foundation is distinct from that of its founder, administrators or any beneficiaries, with fiduciary obligations being binding upon the foundation and all persons administering it toward any beneficiaries for the fulfilment of the stated purposes of the foundation.

Taxation of trusts

The tax treatment of trusts is primarily dependent on whether any of the trustees is tax resident in Malta or not. Trusts with Maltese banks will be deemed to be tax resident in Malta and income tax shall be payable on any income that is attributable to the trust other than those allocated to beneficiaries. Nevertheless, additional considerations are envisaged.

Indeed, where the trust is not engaged in a trading activity and its income solely comprises of royalties, dividends, capital gains, interests, rents or any other income from investments, the trustee may elect to have the trust treated as a company that is ordinarily resident and domiciled in Malta. This would mean that, unless an exemption is available, the trust would be subject to income tax on all the said income at the headline rate of 35%. Moreover, any distributions of such taxed profits to the beneficiaries of the trust would be treated as a dividend distribution to shareholders, to the effect that the beneficiaries would be entitled to benefit from the refundable tax credit system if a number of conditions are satisfied. Distributions of dividends are also generally not subject to further tax, except where the dividends are distributed out of untaxed profits and the shareholder is considered to be a "recipient."

If the election above is not submitted by the trustee, the tax treatment of the trust would be dependent on the nature and source of income earned by the trust and the tax status of its beneficiaries. The trust would be treated as transparent for tax purposes in case where:

- a. The income attributable to the trust consists of either income arising outside of Malta or income in respect of which the nonresidents exemption may be applied and all the beneficiaries are persons who are either not ordinarily resident in Malta or not domiciled in Malta or persons who are totally exempt from income tax; or
- b. The income attributable to the trusts consists of income arising outside of Malta, income in respect of which the nonresidents exemption may be applied, or dividends distributed by a Maltese company and all the beneficiaries of such trust are persons not resident in Malta.

Where a trust is treated as a tax transparent entity, all the income attributable to the trust would be deemed to be income derived directly by such beneficiaries and brought to charge in their hands in line with the rates applicable to them.

Where none of the above applies, the trust would be deemed to be a person ordinarily resident and domiciled in Malta and the income attributable to the trust other than those allocated to beneficiaries should be brought to charge at the rate of 35%.

Conversely, where none of the trust's trustees is tax resident in Malta, none of the income attributable to the trust would be subject to income tax in Malta. Nevertheless, where the settlor of a trust is a person resident in Malta, upon the settlement of property into such trust, the said settlor shall inform the Commissioner of the property so settled, together with a copy, where applicable, of the relevant trust instrument or of any other document evidencing the existence of such trust. This information shall be submitted to the Commissioner by not later than 30 days from the date of the relevant settlement.

As for income tax treatment applicable to income allocated to beneficiaries, which income shall be deemed to have been derived by the beneficiaries at the time it vests, or the beneficiary becomes entitled to it, or income distributed to the beneficiaries out of income that was not brought to charge in Malta in the hands of a non-transparent Maltese tax resident trust, such income shall, where applicable, be aggregated with the other income of the said beneficiaries and brought to charge accordingly in line with the tax status of said beneficiaries.

Taxation of foundations

The general rule is that a Malta private foundation is taxed in the same manner as a company that is ordinarily resident and domiciled in Malta. Nevertheless, the administrators of a foundation may irrevocably elect for the foundation to be taxed under the provisions applicable to trusts. If this election is made, then the provisions of the Income Tax Act and any regulations thereunder concerning trusts as discussed above will be applicable to the founder, the foundation and the beneficiaries.

8. Grants

There are no specific rules in Malta, with respect to grants.

9. Life insurance

A policy of life insurance is subject to duty in Malta if the policyholder is tax resident in Malta. The duty payable is primarily dependent on whether the policy is renewable every year or not. Indeed, where the policy of life insurance is not renewable every year, then duty should be levied at the rate of 0.1% of the sum assured, that is the fixed guaranteed amount payable by the insurer under the policy on the death of the life assured. Otherwise, that is in the cases where the policy of life insurance is renewable every year, duty should be levied at the rate of 10% of the yearly premium.

10. Civil law on succession

The Civil Code is the main law providing for inheritance in Malta, where the Maltese Courts have general jurisdiction to decide upon disputes related to successions, and in certain specific events where the heirs do not agree upon the manner with which the partition of inheritance would take place, this would be referred to the Partition of Inheritance Tribunal, which has special jurisdiction.

The disposal of property after someone's death can be performed in three ways:

- ▶ By means of an ordinary will
- ▶ By depositing a secret will in Court (by the notary or testator); or
- ▶ By distributing property according to law ("intestate succession") if the aforesaid are missing

Any property not covered by the will is disposed of according to the law.

According to Maltese Law, a person is eligible to write his or her will if the testator is at least 18 years old, can attest mental sanity and has not been incapacitated by any court order. Even if the testator has not included his family in the will, Maltese Law states that the close relatives of the deceased are entitled to a portion of the inheritance. Movable and immovable property can be sold if all heirs agree to, dividing the proceeds among them according to the proportions indicated in the will.

10.1 Forced heirship

Under Maltese law, the reserved portion due to all children born in/out of wedlock or adopted shall be one-third of the estate if such children are not more than four in number or half of the value if they are more than five in number. The reserved portion is divided in equal shares among the children who participate in it and in the event that there is only one child, he shall receive the whole of the aforesaid one-third part.

Where the deceased has left children/descendants and a spouse, the succession devolves as to one half upon the children/descendants and one-half upon the surviving spouse. If the deceased leaves no surviving spouse, the succession devolves on the children/descendants and vice versa if he leaves no children/deceased but a surviving spouse.

The portion of the children (or other descendants) who have been disinherited by the testator, shall devolve in favor of other children (or descendants) taking the reserved portion. The reserved portion is calculated on the value of the whole estate, after deducting the debts due by the estate and funeral expenses.

Where a deceased spouse is survived by children or other descendants, the surviving spouse shall be entitled to one-fourth of the value of the estate in full ownership. However, if the deceased spouse is not survived by children or any other descendants, the surviving spouse is entitled to one-third of the value of the estate in full ownership. The right of habitation shall cease on the remarriage of the surviving spouse.

10.2 Matrimonial regimes and civil partnerships

The Civil Code states that the surviving spouse shall be entitled to the right of habitation over the property occupied as the principal residence by the said surviving spouse at the time of decease of the predeceased spouse, where the same property is held in full ownership or emphyteusis by the deceased spouse (either alone or jointly with the surviving spouse).

The extent of the tenement subject to the right of habitation shall not be limited on the grounds that, after the death of the predeceased spouse, the surviving spouse requires a lesser part of the property.

10.3 Intestacy

When there is no valid will, or where the testator has not disposed of the whole of his estate, or where the heirs-institute are unwilling or unable to accept the inheritance, or where the right of accretion among the co-heirs does not arise, intestate succession takes place, wholly or in part. By law, inheritance passes down to descendants, ascendants, the wife or husband of the deceased person, collateral relatives (cousins, aunts, etc.) and to the government of Malta.

In this case, succession functions in accordance with the proximity of the relationship, determined by the number of generations. In the events that the deceased is not survived by any persons entitled to succeed, the inheritance passes down to the government of Malta.

If a person had used fraud or violent tactics to prevent the deceased from making a will, then that person is deemed unworthy of receiving such inheritance from the process of an intestate succession.

10.4 Hereditary funds

There are no hereditary funds in Malta.

11. Estate tax treaties

There are no estate tax treaties between Malta and other countries.