

Insurance Captives



Malta's sound regulatory and legal system as well as its beneficial tax system have, over the years, made it one of Europe's primary captive domiciles. Notable international interest in Malta's captive regime includes, amongst others, Aon Insurance Managers, Marsh Management Services, Heath Lambert, and Willis and JLT; all captive insurance managers of international repute, which have established operations in Malta

Why Malta?

Captives that establish their operations in Malta can benefit significantly from an environment which is politically stable, an English-speaking workforce that is highly specialised and professional, and a regulator (being the Malta Financial Services Authority ("MFSA")) that is pragmatic, accessible and maintains smooth communication flows with all players in the sector. Furthermore, Malta can be a relatively low-cost base, both in terms of cost of labour as well as the cost of facilities, such as office premises and maintenance.

Maltese captives can insure the risks of a wide range of persons, ranging from individuals or other entities having a majority ownership or controlling interest in the captive to parent companies or associated or group undertakings; including members of trade, industry or professional associations insuring risks related to the particular trade, industry or profession.

Taxation

Through the application of Malta's full imputation system, which completely eliminates economic double taxation, Malta offers a flexible tax environment for captives.

Captives not deriving income from Maltese immovable property are liable to tax on such income at 35%, subject to relief for any foreign tax suffered. However, upon a distribution of dividends, the shareholders may claim a 6/7ths tax refund of the Malta tax paid.

The tax refund, which can also be availed of by branches of foreign companies registered in Malta for tax purposes, has the effect of reducing the total tax paid in Malta to 5% or lower wherever double taxation relief is claimed, making Malta the European Union ("EU") jurisdiction with the lowest effective tax rate.

Expatriates working in Malta

Expatriates employed in the senior-most positions of captives may benefit from a beneficial flat rate of tax of 15% on their employment income for a determined amount of years. The minimum annual amount which may be taxable at 15% is €75,000. Any qualifying income above €5,000,000 is not subject to tax in Malta.

Alternatively, or if a person does not qualify for the 15% flat rate of taxation, a 10-year exemption on certain fringe benefits is available.

Indirect Tax Issues

Malta's Value Added Tax ("VAT") system is modelled on the EU VAT system, the standard rate of VAT being 18%. The supply of insurance and related services (excluding administration services), offered by captives and their managers are exempt without credit for VAT purposes. A captive would still need to register for VAT purposes where it receives services it is liable to pay VAT on.

Where insurance services are provided to non-EU established customers, captives and their managers are entitled to recover VAT incurred on supplies they procure which are attributable to the supply of insurance services to such non-EU established customers.

Insurance premium tax known as stamp duty, will be due only when the risk is located in Malta.

Other Tax Matters



Besides offering the lowest effective tax in the EU, and an attractive tax package for expatriates working for captives, Malta is also tax efficient for the following reasons:

- Redomiciliation or continuation of foreign captives to or from Malta is allowed.
- There are no:
 - Capital duty or wealth taxes;
 - Thin capitalisation rules;
 - CFC legislation;
 - Transfer pricing rules;
 - Withholding taxes on dividends paid to non-residents.
- Captives resident in Malta can benefit from Malta's wide treaty network.
- Non-residents are exempt from tax on interest and premia paid to them from Malta provided that the debt claim in respect of which the interest or premium is paid is not effectively connected with a Maltese permanent establishment through which a non-resident recipient carries on a trade or business in Malta.
- Technical provisions and movements in equalisation reserves are allowable deductions in the computation of taxable income.

The Regulatory Framework

The licensing of a captive in Malta is a relatively straightforward affair. It is common practice for the promoters of the captive to meet the MFSA early on in the application process in order to create a cooperative platform between the regulators and the promoters and ensure that the goals and structures are clear to all involved.

Together with the licence application, the promoters are to submit a scheme of operations, which would generally include details such as the investment strategy, business strategy, outsourcing agreements and financial projections and resources. This scheme has to be signed off by the directors, while the financial projections need to be reported on by an approved auditor or the insurance manager, and the actuary in the case of life business.

The captive's objects must be limited to the business of affiliated insurance and operations arising directly therefrom to the exclusion of other commercial business.

All qualifying shareholders, up to the level of the ultimate beneficial owners, need to be properly identified, and these together with the proposed directors and shareholders will have to undergo a due diligence process by the MFSA in order to ensure the company's sound and prudent management.

Capital Requirements

Captive insurance companies are required to possess own funds amounting to not less than the applicable minimum guarantee fund, which varies depending on the business of the captive. The minimum guarantee fund for a reinsurance captive is €1.2m, whilst for a general business captive it ranges between €2.5m - €3.7m, subject to the type and class of business. In the case of life insurance captives, the minimum guarantee fund is €3.7m.

These funds must be unencumbered at all times and are to consist of:

1. Paid-up share capital amounting to not less than 50% of the value of own funds requirement; and
2. A mixture of issued and unpaid share capital, preferential share capital, subordinated loans, retained profits and reserves (not incorporating technical provisions or equalisation reserve).

Solvency Requirements and Technical Provisions

Captive companies are required to maintain at all times a margin of solvency and maintain adequate technical provisions. Captives engaged in direct writing of general or life business are required to cover the technical provisions by admissible assets, which assets must be diverse and spread.

Applicable Exemptions



Captives are exempt from:

1. Publishing accounts in newspapers;
2. Contributing to the Protection and Compensation fund;
3. Localisation rules and custody of assets rules;
4. Covering their technical provisions by equivalent and matching assets to cover currency risk;
5. Depositing the minimum guarantee fund with an external institution; and
6. A number of obligations on cessation of business of insurance.

Procedures and Fees

The application for licensing a captive is processed within a maximum statutory period of 3 months. This would however depend on whether all progresses smoothly, such as whether all documentation is accurate and complete.

The fees applicable to captives are:

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| Application for authorisation | €1,800 |
| Acceptance of application | € 2,500 |
| Continuance of authorisation | € 5,000 |

Protected Cell Companies (PCC) and Incorporated Cell Companies (ICC)

Malta is the only EU Member State which allows companies to set-up as protected cells segregating assets and liabilities.

A Captive may be registered as, or converted into, a PCC with each cell in a PCC being treated as separate from other cells for income tax purposes.

A PCC is a single legal person, having within itself one or more cells, classified as different classes of shares for the purposes of segregating and protecting the cellular / non-cellular assets of the company. It is the PCC which is treated as a single legal person, a cell does not enjoy a separate legal personality from the PCC. The advantage of this is that the minimum capital requirements applicable to a non-cell company apply to the PCC as a whole and not individually to each cell.

A PCC must:

1. Inform all persons with whom it transacts that it is a PCC;
2. Keep cellular assets 'separate and separately identifiable' from the core assets of the company and from the assets of other cells of the company; and
3. Keep separate records, accounts and statements for the different cells of the company.

An ICC is similar to a PCC but each cell has a distinct separate juridical personality and hence also allows contracting amongst cells.

Passporting

With Malta being a Member State of the EU, European insurance undertakings may freely passport their activities into Malta, and likewise this right applies for Maltese insurance undertakings to passport into EU/EEA countries. This may be done either through the setting up of a branch or through the freedom to provide cross-border services. Insurance companies availing themselves of these rights have to adhere to the notification requirements in force.

Captive Insurance Managers

An insurance manager is a person appropriately licensed by the MFSA to accept appointments from companies to manage any part of their business, to exercise managerial functions therein, or to be responsible for maintaining accounts or other records of such company. Management functions may include the authority to enter into contracts of insurance on behalf of such company under the terms of appointment.

An insurance manager is required to possess own funds amounting to:

- A minimum of €16,803 if the activities of the Insurance Manager are restricted to servicing captive insurance companies;
- The higher of €16,803 or 4% of annual gross premiums receivable if it does not enter into contracts of insurance on behalf of its clients or the manager has the authority to collect and hold premiums on behalf of its clients;
- The higher of €58,234 or 4% of annual gross premiums receivable if its activities are not restricted to servicing captive insurance, and include the authority to enter into insurance contracts on behalf of its clients.

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