



**PrimeGlobal**

*An Association of  
Independent Accounting Firms*

# DOING BUSINESS IN MALTA





# COMPANY FORMATION IN MALTA

## MAIN FORMS OF COMPANY/BUSINESS IN MALTA

- Private Limited Liability Company
- Public Limited Liability Company

The Malta Registry of Companies, housed within the offices of the Malta Financial Services Authority is the regulator of companies and other commercial partnerships.

Companies in Malta are to be set up via licensed corporate service providers.

### **Private Limited Liability Company**

A Private Limited Liability Company is a company that must, by its Memorandum or Articles of Association:

- a) restrict the right to transfer its shares;
- b) limit the number of members to fifty; and
- c) prohibit any invitation to the public to subscribe for any shares or debentures of the company.

The minimum share capital in a Maltese private limited liability company is EUR 1,164.69, which may be subscribed by one person. The minimum amount to be paid up is 20% of this amount. It is possible for these types of companies to have one director on the Board.

### **Public Limited Liability Company**

A Public Limited Liability Company has no restrictions on the number of members as per above, but requires a higher issued share capital: EUR 46,587.47, at least 25% paid-up. The minimum number of directors on the Board for such companies is two.

## SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

There are no taxes upon setting up Maltese companies, but only the fees payable to the Registry of Companies are due. The latter vary depending on the size of the authorised share capital of the Company.

There are no wealth taxes or duties payable upon the incorporation or subsequent increase in equity of a Maltese company.

## LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

The Corporate Service Provider setting up the Maltese company would carry out due diligence checks on all the parties involved in the company in terms of local Anti-Money Laundering and Prevention of the Funding of Terrorism Regulations/Legislation.



There are no restrictions on the jurisdiction of the involved parties in a Maltese company, except for FATF black-listed persons.

### **CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY**

---

Malta's official languages are English and Maltese, and all legal documents are prepared in English. The same goes for all correspondence sent by Government bodies and financial institutions. Hence, there are not cultural concerns which ought to be flagged.

### **OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY**

---

Malta in general is pro-business and geared towards international structures and set ups. It is a country with low levels of bureaucracy and excellent communications, together with a capable work force and sophisticated legislation including very attractive fiscal incentives which facilitate foreign businesses setting up business in or via Malta.



## PERMANENT ESTABLISHMENT IN MALTA: BRANCH OR SUBSIDIARY?

### DEFINITION OF A PERMANENT ESTABLISHMENT

There is no definition of a permanent establishment in Maltese law and the latter generally follows the OECD definition: "a fixed place of business where the business of an enterprise is partly or wholly carried out."

Malta has concluded around seventy (70) double taxation treaties, which ought to be looked at when assessing whether a permanent establishment is created in Malta or not.

### DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

#### **Subsidiary**

Fully fledged company registered in Malta, which pays taxes on a world-wide basis meaning that all of its income and capital gains, arising in Malta or elsewhere, whether received in Malta or not, is taxable in Malta. The headline tax rate is 35% on taxable profits.

However, subsidiaries can benefit from various tax incentives and with correct structuring typically pay effective tax rate between 0% and 5% in Malta. There are also patent-box exemptions as well as other tax exemptions including a participating holding regime for holding companies.

#### **Branch**

The branch of a foreign company registered in Malta is taxable at the headline tax rate of 35% on income arising in Malta, and any foreign income which is remitted to Malta. Any foreign income or capital gains which are not remitted to Malta are not taxable in Malta. Hence, branches enjoy a territorial system of taxation whilst also being able to benefit from other benefits, for example the possibility of registering for VAT purposes in Malta.

### TAX AND ACCOUNTING OBLIGATIONS

Both branches and subsidiaries have obligations to keep proper books of account and present financial statements in line with IFRS or local GAAP (Generally Accepted Principles for Smaller Entities), when the latter applies.

### REGISTRATION FORMALITIES

A subsidiary must present to the Registry of Companies, via a licensed Corporate Service Provider in Malta, a signed Memorandum and Articles of Association together with proof that the initial share capital has been applied. The process of opening a subsidiary in Malta is very swift, and this is normally done in a few days.



A branch ought to present certain prescribed forms and also documentation to show that the company applying for the branch is duly registered and in good standing in its country of registration. A Maltese representative is to be also appointed who will act as the liaison between the branch and the Malta Registry of Companies. Provided the necessary documents are provided, a branch is also registered quickly within a few days.

### STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

- Submit documents to attest that the company is in good standing and registered in its country of Registration, including resolutions to show the decision to open a branch in Malta
- Have a registered office in Malta
- Appoint a Maltese representative to act as the liaison between the branch and the Malta Registry of Companies
- File annual income tax returns and pay any income taxes due
- Prepare financial statements in line with IFRS or local GAAP when applicable, and file such with the Inland Revenue Department and also with the Malta Registry of Companies
- Report any changes to the constitution of its shareholders/board of directors/officers to the Malta Registry of Companies



## HOW TO HIRE MY FIRST EMPLOYEE IN MALTA

### MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

1. Enter into a contract of employment with the Employee which is drafted in terms of Maltese law.
2. Verify that the employee possess the valid employment licenses in Malta. For EU/EEA nationals, there is no legal requirement to apply for a work permit though the latter would have to register for income tax and social security purposes. Typicall such persons, staying more than six months in Malta, would need to register for a residence card in Malta.
3. Engage the Employee by means of an engagement form which would need to be submitted to the Employment and Training Corporation.
4. Register the Employer with a PE number with the Inland Revenue Department
5. Register the Employee with the Inland Revenue Department by notifying about the applicable tax rates on the salary which will be paid via an FS4 form

### DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

The contract would need to include certain important attributes:

1. Details of the Employer and Employee
2. Description of the title and job being offered
3. Gross Annual Salary, together with any fringe benefits, per diems, or other additional terms connected with the remuneration of the Employee
4. Whether contract of employment is definite or indefinite
5. Working hours and any special rules on overtime, leave entitlement, etc.

### CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

Sub-contractors could be employed to provide services without them being employed directly. The latter would have their respective tax/VAT/reporting requirements in terms of law.

However, the use of sub-contractors for a certain period of time would need to be assessed in terms of Legal Notice 44 of 2012 as amended, with this legislation providing for certain circumstances where the sub-contractor might be presumed to be an employee even if not de facto employed directly by the Employer. This law provides that if five of the following criteria are satisfied, an employment relationship is created:

- (a) he depends on one single person for whom the service is provided for at least 75% of his income over a period of one year;
- (b) he depends on the person for whom the service is provided to determine what work is to be done and where and how the assigned work is to be carried out;
- (c) he performs the work using equipment, tools or materials provided by the person for whom the service is provided;



- (d) he is subject to a working time schedule or minimum work periods established by the person for whom the service is provided;
- (e) he cannot sub-contract his work to other individuals to substitute himself when carrying out work;
- (f) he is integrated in the structure of the production process, the work organisation or the company's or other organization's hierarchy;
- (g) the person's activity is a core element in the organization and pursuit of the objectives of the person for whom the service is provided; and
- (h) he carries out similar tasks to existing employees, or, in the case when work is outsourced, he performs tasks similar to those formerly undertaken by employees.



## HOW TO READ FINANCIAL STATEMENTS IN MALTA

**ABC LIMITED**  
Statement of profit or loss and other comprehensive  
income  
for the year ended 31 December 2014

	Notes	2014 Eur	2013 Eur
<b>Revenue</b>			
<b>Cost of Sales</b>		_____	_____
<b>Gross Profit (Loss)</b>			
<b>Investments Income</b>			
<b>Other gains and losses</b>			
<b>Distribution expenses</b>			
<b>Marketing expenses</b>			
<b>Administrative Expenses</b>			
<b>Finance Costs</b>		_____	_____
<b>Profit/Loss before tax</b>			
<b>Income tax expenses</b>			
<b>Profit/Loss for the year</b>			
<b>Other comprehensive income, net of income tax</b>			
<b>Total Comprehensive income for the year</b>		=====	=====





**ABC LIMITED**  
**Statement of Financial Position**  
**as at 31 December 2014**

	2014	2013
	Eur	Eur
<b>ASSETS</b>		
<b>Non-Current Assets</b>		
Property, Plant & Equipment		
Investment Property		
Other Financial Assets		
Deferred Tax Asset		
<b>Total non-current assets</b>	_____	_____
<b>Current Assets</b>		
Inventories		
Trade and Other Receivables		
Cash and Cash Equivalents		
<b>Total Current Assets</b>	_____	_____
<b>Total Assets</b>	=====	=====
<b>EQUITY AND LIABILITIES</b>		
<b>Capital and Reserves</b>		
Issued share capital		
Other Reserves		
Retained Earnings		
<b>Total Equity</b>	_____	_____
<b>Non-Current liabilities</b>		
Other financial liabilities		
Deferred tax liabilities		
<b>Total non-Current Liabilities</b>	_____	_____
<b>Current Liabilities</b>		
Trade and Other Payables		
Other financial liabilities		

# DOING BUSINESS IN MALTA



**Total Current Liabilities**

\_\_\_\_\_

**Total Liabilities**

\_\_\_\_\_

**Total Equity and Liabilities**

=====





**ABC LIMITED**

**Statement of Changes in Equity**

**Year ended 31st December 2014**

	<b>Share Capital Eur</b>	<b>Retained Earnings Eur</b>	<b>Other Reserves Eur</b>	<b>Total Eur</b>
<b>Balance at 1st January 2013</b>				
Profit for the year				
Other Comprehensive income for the year				
<b>Total Comprehensive Income for the year</b>				
Payment of Dividends				
<b>Balance at 31st December 2013</b>				
<b>Balance at 1st January 2014</b>				
Profit for the year				
Other Comprehensive income for the year				
<b>Total Comprehensive Income for the year</b>				
Payment of Dividends				
<b>Balance at 31st December 2014</b>				



**ABC LIMITED**  
**Statement of Cash Flows**  
**for the period ended 31 December**  
**2014**

	<b>2014</b>	<b>2013</b>
	<b>Eur</b>	<b>Eur</b>
<b>Cash flows from operating activities</b>		
Reconciliation to cash generated from operations:		
Profit/(Loss) before tax		
Depreciation		
Impairment of assets		
Interest payable		
(Increase)/decrease in inventories		
(Increase)/decrease in trade receivables		
Increase/(decrease) in trade payables		
Interest paid		
Income tax paid		
<b>Net cash generated by operating activities</b>	_____	_____
<b>Cash flow from investing activities</b>		
Payment to acquire of property, plant and equipment		
Proceeds for disposal of property, plant and equipment		
<b>Net Cash (used in)/generated by investing activities</b>	_____	_____
<b>Cash flow financing activities</b>		
Proceeds of issue of shares		
Proceeds from borrowings		
Repayment of borrowings		
<b>Net cash used in financing activities</b>	_____	_____
<b>Net Cash and Cash equivalents</b>	_____	_____
<b>Cash and equivalents at beginning of the year</b>	_____	_____
<b>Cash and equivalents at end of period</b>	=====	=====