

The Establishment of QROPS in Malta

Malta has gained the reputation of a first-class jurisdiction in the financial services sector, and has started to extend this sector with applications for the establishment of new retirement schemes and funds. The strength of Malta's reputation as a financial services jurisdiction has been further reinforced by the fact that retirement schemes established in Malta and regulated by the Malta Financial Services Authority (the "MFSA") may be recognised by Her Majesty's Revenue and Customs in the U.K. (the "HMRC") as Qualifying Recognised Overseas Pension Schemes ("QROPS").

The Special Funds (Regulation) Act 2002 (the "Act") makes provision for the establishment and operation of Pillar II retirement schemes and funds and also for the registration and supervision of the related service providers of a retirement scheme or fund, mainly the administrator, the asset manager and the custodian.

Why Malta?

Malta offers a number of advantages:

- **A Prudential but Flexible Approach** – By virtue of the Act and the rules issued by the MFSA, Maltese retirement schemes and funds are highly regulated while permitting a good degree of adaptability and innovation.
- **An Approachable and Efficient Single Regulator** – The MFSA (the single regulator of Maltese financial services) is approachable and committed to providing timely and efficient responses to business proposals and to accommodating the needs of the industry, provided investor protection is adequately ensured. The licence is issued by the MFSA within an approximate time frame of 8 to 12 weeks.
- **A Wide Range of Investment Possibilities** – Only reasonable investment restrictions are imposed on retirement schemes or funds.
- **A Stable and Favourable Tax Regime** – Traditionally, Malta has always offered a stable tax regulation framework, which provides certainty, particularly for foreign investment activities. Moreover, Malta has an extensive treaty network consisting of income tax treaties with over 45 countries, which offer a number of benefits to clients setting up their business structures in Malta. With specific reference to retirement schemes and funds established in Malta, the income (other than income from immovable property situated in Malta) of a retirement scheme/fund licensed, registered or otherwise authorised under the Act, including capital gains, is exempt from tax under the Malta Income Tax Act.

Such favourable tax treatment is enhanced by Malta's full imputation tax system and provision for tax refunds, allowing for further efficient tax planning.

- An EU Member State - Malta as an EU Member State has aligned its laws and regulations with the *acquis communautaire* governing financial services. This includes the IORP Directive which provides for the operation of cross-border occupational pension schemes, enabling firms established in an EU Member State or EEA State to sponsor occupational schemes located in other Member States or EEA States.
- A QROPS Jurisdiction - As a result of discussions between the MFSA and HMRC, Malta has been recognized as a QROPS jurisdiction and therefore HMRC will consider, on a case by case basis, applications from retirement schemes based in Malta for registration as QROPS. Yet, it will be fundamental that this QROPS status is maintained throughout with HMRC. Amongst its other measures to this effect, the MFSA imposes a maximum of 25-30 % of the pool of funds to be withdrawn by a scheme member upon retirement as a lump sum, which according to the MFSA guidelines will be tax free. This conforms to the permissible limits imposed by HMRC for QROPS recognition.
- A Customised Benefit Structure - Once the retirement scheme has been established in Malta, Maltese legislation confers substantial flexibility regarding the benefit structure which can be customised to suit the objectives of an international business. The scheme member of a Maltese retirement scheme may be paid benefits in the form of a combination of a lump sum (subject to the above-mentioned limits) and/or by way of an annuity or a programmed withdrawal arrangement devised by the scheme.

Our Services

In this field the services offered by Mamo TCV include:

- Advice on all financial services legislation and local implementation of Community Law;
- Assistance with the setting-up of schemes and funds and preparation and submission of licence applications;
- Liaising with the MFSA and relevant government departments;
- Drafting and negotiation of service provider agreements.

Should you require further information or legal assistance, please do not hesitate to contact Joseph Saliba (joseph.saliba@mamotcv.com) or John Paul Zammit (johnpaul.zammit@mamotcv.com); telephone +356 21 231 345; fax: +356 21 244 291.