



Securitisation in Malta

Securitisation is an essential means of raising finance and Malta's flexible framework creates scope for a wide range of transactions in this regard. Maltese law provides for a number of securitisation structures, all of which may benefit from Malta's fiscal regime while taking advantage of a dynamic business infrastructure and regulatory framework.

From a fiscal perspective, achieving tax neutrality in, and as such ensuring that no additional tax in which liabilities arise from, a securitisation transaction is important when choosing the jurisdiction to establish a securitisation vehicle (also referred to as a Special Purpose Vehicle or SPV). The following tax drivers are therefore to be considered in terms of choosing a jurisdiction for a securitisation SPV:

- Tax neutrality at the level of the SPV, i.e. the securitisation transaction should not create any new tax liabilities;
- Timing of taxation, i.e. the securitisation transaction should not accelerate any tax liabilities;
- The ability of the SPV to make outbound payments (e.g. to its investors and/or owners) free of withholding tax;
- The ability of the SPV to receive income (e.g. investment income) free of foreign withholding tax (or at reduced rates);
- No local tax liability for the foreign note holders (i.e. the buyers of issued securities by the SPV);
- A neutral VAT position;
- No stamp duties and capital, wealth or other similar taxes; and
- Certainty with regard to tax treatment, i.e. the non-existence of any uncertainty with regard to tax liability of the structure.

This document demonstrates that Malta may essentially be able to meet all these requirements and could therefore be an attractive location for SPVs from an international tax perspective. Besides the fiscal benefits Malta has to offer, this document also outlines some legal benefits that are essential for setting up a securitisation SPV in Malta.

1. Legal essentials

Securitisation was introduced in Malta under the Securitisation Act of 2006, which provides a comprehensive yet flexible system for all kinds of securitisation vehicles and assets that may be securitised.

Securitisation vehicles

A securitisation vehicle may take the form of a company, including an investment company; a commercial partnership; a trust created by a written instrument; or any other legal structure which may be permitted by the MFSA.

A securitisation vehicle may be established under the laws of Malta or those of a jurisdiction recognised by the MFSA.

The Maltese Civil Code also provides for the use of foundations in securitisation transactions, the most suitable of which, for such transactions, is the purpose foundation.

Assets which can be securitised

The Securitisation Act provides a high degree of versatility with regards to the assets which are capable of being transferred or assigned in a securitisation transaction. In terms of the Securitisation Act, any asset, whether existing or future, whether movable or immovable, and whether tangible or intangible, including risks, qualifies as a securitisation asset.

The transfer of securitisation assets

In terms of the Securitisation Act, the originator and the securitisation vehicle are given absolute discretion as to what method is employed in transferring the securitisation assets, including, without limitation, by novation, sale, assignment and declaration of trust. The Act also stipulates that it is lawful for the future receivables of an originator, including future claims against future debtors, to be the subject matter of an assignment in favour of a securitisation vehicle.

Bankruptcy remoteness

The Securitisation Act specifically provides that any proceedings taken in relation to the originator, including any dissolution and winding-up proceedings, any company recovery procedure, any company reconstruction, and any proceedings affecting creditors' rights generally shall have no effect on:

- a. The securitisation vehicle;
- b. Any securitisation assets acquired or risks assumed by the securitisation vehicle, as well as any cash flow, or other asset of the securitised vehicle; or
- c. Any payments due by the underlying debtors in connection with the securitised assets.

Regulatory essentials

Any entity acting as a securitisation vehicle in or from Malta should give notice to the MFSA that it intends entering into one or more securitisation transactions.

Securitisation vehicles which issue or which wish to issue financial instruments to the public on a continuous basis must, before issuing such financial instruments to the public, obtain a licence from the MFSA.

2. Taxation of securitisation transactions

Taxation of the securitisation SPV

Securitisation vehicles established in Malta are taxable in Malta under the normal income tax rules. As such, a securitisation vehicle established as a Maltese limited liability company is taxable in Malta on its worldwide profits and gains at the standard rate applicable to companies. However, a Maltese securitisation vehicle can deduct costs from its profits such that essentially no taxable profits should remain at the level of the securitisation vehicle.

More specifically, for the purpose of ascertaining the taxable income of a securitisation vehicle, the following costs may be deducted in addition to any costs that may be deducted under the 'standard' Maltese tax rules:

- Payments for the transfer of securitisation assets, or for any risks assumed, to or by the securitisation vehicle (the 'acquisition price');
- Premiums, interest or discounts in relation to financial instruments issued, or funds borrowed by the securitisation vehicle to finance the acquisition of the securitised assets or the assumption of risks;
- Any expenditure incurred by the securitisation vehicle in respect of the day to day administration of the vehicle itself (including costs for delegation of these tasks); and
- If any taxable income remains present at the level of the securitisation vehicle, an amount equal to such remaining income (the 'residual deduction').

Due to this 'residual deduction' in terms of which the securitisation vehicle can, for Malta tax purposes, deduct an amount equal to any remaining income, no taxable income should effectively remain at the level of the securitisation vehicle ensuring tax neutrality at the level of the SPV.

Taxation of the originator

An amount equal to the deductions by the SPV under the acquisition price and residual deduction categories are deemed to constitute income in the hands of the originator or assignor. Therefore, in case the originator or assignor is resident for tax purposes in Malta, an amount equal to these deductions is taxable in Malta in the hands of such person. However, no Malta tax is typically payable on such deemed income if the originator or assignor is not resident for tax purposes in Malta.

Taxation of the investors

In terms of domestic law, Malta does not, in principle, levy withholding tax on payments made by the securitisation vehicle to non-Malta resident holder of securities or bonds issued by the said securitisation vehicle.

In other words, irrespective of whether the investors will hold debt or equity based instruments and, as such, irrespective of whether they will be compensated in the form of interest or dividends, non-Malta resident investors are typically not subject to tax in Malta on their income derived from the SPV.

Additionally, a specific Malta tax exemption generally applies to gains or profits derived by a non-Malta resident on a transfer of any shares or securities in a Maltese company (including redemption, liquidation or cancellation). Capital gains derived on the transfer of debt instruments are generally not taxable in Malta.

Foreign withholding tax on payments made to the SPV

Due to Malta's extensive treaty network and EU membership, foreign tax exposure on payments made to the SPV may potentially be reduced or even eliminated. Currently, Malta has more than 70 treaties in force and another four treaties pending.

Value Added Tax (VAT)

VAT may be payable on fees charged for certain services rendered to the SPV if for Malta VAT purposes such services are rendered, or deemed to be rendered, in Malta and an exemption from Malta VAT does not apply to such services, e.g. standalone investment advisory services and rating agency services (the standard Malta VAT rate is 18%). The "management" of an SPV may be VAT exempt in so far as the services consist of discretionary management of the investment portfolio.

Other services, such as subscription, underwriting and placement services should be VAT exempt on the basis of the general exemption applicable to the negotiation of securities.

Stamp duty in Malta

Stamp duty is levied in Malta on documents evidencing transfers of immovable property, marketable securities or an interest in a partnership as well as on certain specified documents such as policies of insurance. However, certain exemptions from Malta stamp duty on transfers of marketable securities may usually be available with respect to securitisation transactions.

Next steps

Malta offers a highly competitive jurisdiction for securitisation transactions. The Securitisation Act provides a sound base for a wide scope of securitisation transactions, including asset securitisation, risk securitisation, synthetic securitisation and whole business securitisation. Finally, from a tax perspective Malta offers a straightforward solution for a neutral income tax treatment of the securitisation vehicle, the originator and the investors in the securitisation vehicle.

Tax factsheet

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