

Practitioners Update

Issue 01/2010

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Combatting Negative Perceptions of Malta

IFSP and MFSA to address issue in workshop on 22 January 2010

Practitioners deal with foreigners on a regular basis. The range of reactions to Malta varies from highly positive to completely uninformed or even simply negative. This is, of course, a problem. It restricts the business Maltese financial services professionals can do – and this hurts the country as a whole.

So how can a practitioner deal with a potential client who knows nothing about our island, its heritage and tradition of financial services – and what he does know is wrong? In an ideal world, there should be a consistent set of answers that can be adapted to different needs while providing a coherent view of Malta and its financial services jurisdiction.

The IFSP has responded to this need, with the assistance of the MFSA. Looking for the easiest way to help its members develop this coherence in dealing with clients and overseas contacts, the Institute has prepared a series of FAQs – models that can form the basis for each individual's answer to specific, commonly asked queries about Malta.

They start from the simplest things – where is Malta, after all? More worryingly, many people continue to labour under the impression that the Maltese jurisdiction is a tax haven, or unsophisticated and therefore easy on money launderers.

We all know this is not the case. We also know why. The problem lies in the communication: how can we put the message across clearly? How can we make sure that what one practitioner says does not contradict whatever another had said earlier?

Hence the FAQs. A simple idea and a well-trodden route that everybody is now familiar with from the internet. They will be rolled out to practitioners for the first time on 22 January 2010, with a two hour workshop at the MFSA's new conference facilities, conducted by Prof Joe Bannister, MFSA Chairman, Andrew Manduca, IFSP President and Juanita Bencini, IFSP Council Member. ■



Getting the message out

Comments, suggestions and criticism welcome!
Email us on info@ifsp.org.mt

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Combatting Negative Perceptions of Malta

Friday, 22 January, 2010, from 16:30 to 18:30, at the MFSA in Mriehel

A discussion of sample FAQs and model answers on Malta's jurisdiction, led by Prof. Joe Bannister, Chairman of the MFSA, Andrew Manduca, IFSP President, Juanita Bencini, IFSP Council Member and chair of the PMLF sub-committee and other leading practitioners.

Please confirm your attendance by
18 January 2010
Email: info@ifsp.org.mt
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Strong interest in trusts continues

The Commercial Uses of Trusts seminar, held on Friday, 23 October 2009 at the Westin, was a roaring success. The IFSP hosted more than 140 people keen to learn the ways they can put the trust structure to work, and if there had been space available more would have been able to attend.

It is not often that the IFSP finds itself having to turn people away from events because they are effectively sold out. Neither would one expect the usually rather dry subject of trusts, already well represented in events and seminars in Malta, to be such a crowd-puller. Yet that is what it turned out to be!

What this seminar showed beyond doubt is that practitioners across the industry believe that there is a lot of potential for growth in this area.

Particularly encouraging from this point of view is the number of attendees from outside the financial services arena – people who, as managers or business owners, would normally be the clients to the practitioners who normally make up the bulk of the audience at events of this sort.

Adding to the interest, the subject of the IFSP seminar was inherently practical. The speakers dealt with the ins and outs of a variety of real implementations of the trust structure, focusing on the how and what rather than the more academic, drier why of many discussions around the concept of a trust. People are interested in trusts, awareness is growing and now people want to know just what it is they can do with them.

Comments received since the seminar have been very positive. The presentations were not overly dry, academic or technical - legalese was conspicuous through its absence!

With the mixed audience, including lawyers, accountants, students and business people, this was very important.

Neither was there much overlap between the areas covered by the different speakers. On the contrary, they all dovetailed together very nicely, providing delegates with a good idea of some of the potential uses of trusts, as well as an understanding of their inherent flexibility.

It helped that the speakers were of a high calibre, all leading practitioners in their fields. Max Ganado, Simon Tortell, Andrew Chetcuti Ganado, Conrad Portanier, Simon Schembri, Louis Degabriele and André Zerafa all dealt with different aspects of the practical application of trusts to real-world requirements.

There can be no substitute to listening to the speakers there at the seminar, but IFSP members who were unable to be at the Westin on 23 October do have the opportunity to learn what the speakers said.

The presentations are all available online in the members' area of the IFSP website. Just click on the link to get to presentations under the [Publications](#) tab on the IFSP website. ■

If you've mislaid your password or user name, just call the Secretariat for a reminder

Getting the complete Malta message right across economic sectors

The IFSP is participating in a Positioning Study, which aims to provide a framework for the promotion of Malta and the services the country can provide. Also participating: Air Malta, MTA, Malta Enterprise, FinanceMalta, VISET, the Chamber of Commerce and Industry, MHRA and 10 other organizations.

There have been complaints about the way Malta presents itself to the outside world, starting with how we promote our island as a tourist resort. But not only: there has been criticism, often justified, of the way Malta is portrayed to the world as a financial centre and investment domicile.

For years, people have talked about the need for a single, clear vision of Malta as a destination. What is it that makes Malta uniquely attractive for a holiday, for your finances, as a place to invest your money or to relocate your company to?

Lying just beneath the surface, many of us may have harboured a suspicion that maybe, just maybe, there is a clear message that will address all these areas – with a few adjustments to allow for different audiences.

There have been attempts to achieve this before. This project, however, is different.

This time, all the different sectors that reach outside our shores are being included. That means finance and business as well as tourism.

The approach is different: the process is kicking off with a so-called positioning study – an attempt to find what makes Malta attractive across the many interested sectors by consultation with sector participants themselves.

The output will also be different. The process will not produce a grand, overall marketing campaign - it will generate “brand guidelines”, for want of a better phrase. That is, a framework within which individual firms and public bodies can construct their own individual campaigns and be certain that each separate message and campaign will be coordinated with the others, with each strengthening the overall effect.



There are, of course, very legitimate doubts about this process. First: can it really work? Can it deliver what it promises? Will the individual firms and organizations be willing and able to put the results to good use? There is really no answer to that.

For all this, it promises to be a useful exercise, and one which should be of benefit to IFSP members. If nothing else, it will provide a useful analysis of the perception of Malta by foreigners, with input from a range of different areas. ■

Keeping up with VAT changes

Changes to how VAT charged and accounted for on the cross-border supply of services put in place on 1 January 2010

Received wisdom is that the only certainties in life are death and taxes. Experience, however, shows otherwise. Tax seems to be in a state of continual flux, with sometimes far reaching shifts taking their toll of the best laid plans.

The changes to the way VAT is charged on cross-border supplies of services, due to come into effect on 1 January 2010, is a case in point.

To ensure no member is taken by surprise by this transformation, the VAT Sub-Cell of the IFSP's Tax and Non-Regulated Business Sub Committee has prepared a short document highlighting the nature of the changes and – an important point – the expected impact on companies and their financial services providers.

The intention behind the new VAT rules is an honorable one: the European Commission is seeking, first, to simplify procedures for refunds and so on and second, to make VAT fraud a more difficult proposition. In the medium to long term, the benefits to businesses are concrete and substantial.

Immediately, however, firms may find the changes to business practices and methods painful.

The main change due on 1 January is a simple change in the place of supply rules, with exceptions for particular services. Along with this there is also a change in the time of supply, and increased reporting requirements.

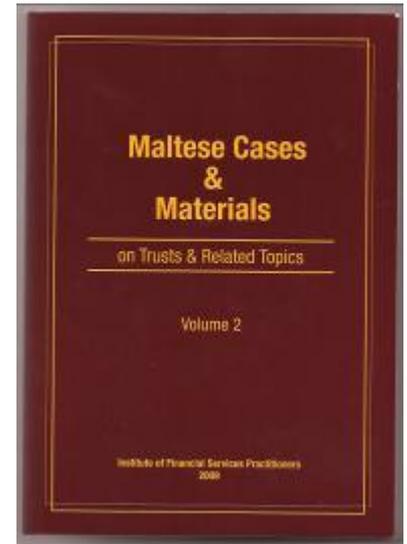
And despite our reference to VAT 2010, there are further changes down the line, approved and accepted as part of this same package, but not due to kick in until 2011, 2012 and even, in at least one instance, in 2015.

This is all covered in the VAT Sub-Cell's publication. It has been emailed to all members, and for anyone who missed that or needs a new copy, it is also on the IFSP's website, so [click here to download it](#).

It comes with the standard health warnings: it is not a blueprint for the changes any firm may need to make, it is a pointer to the sort of issues that need looking at.

So get professional advice if you need it. One thing does remain certain: getting tax wrong will remain a dangerous game! ■

How the courts deal with trusts



There seems to be no end to the interest in trusts! Hot on the heels of the very well attended seminar on the Commercial Uses of Trusts, a full 50 members responded to an email poll asking if they would be interested in attending a further workshop, this time bringing the spotlight onto the way the judiciary treats trusts and similar issues. All but one said yes.

It will happen on 4 February 2010 at 16:30, at the MFSA. The workshop is structured around *Maltese Cases and Materials on Trusts & Related Topics, Vol. 2*, a book published by the IFSP and edited by Max Ganado, along with a hardworking group of lawyers.

This is another event to look at trusts in practice, not in the abstract. They are robust structures, and flexible too. But they will generate disputes, and it is of great practical interest to learn how Malta's magistrates and judges have understood principles such as the role and responsibilities of the trustee, and how they have contributed to the development of trust structures.

This new volume is a welcome extension to the first volume, published soon after amendments to the Trusts and Trustees Act and the Civil Code were put into effect in 2004. The first volume went a long way to ensure that practitioners in the area had access to materials relevant to the new laws; Volume 2 builds on this, adding the results of close to five years of experience implementing them.

Get in touch with the secretariat on info@ifsp.org.mt to reserve your seat, or indeed to order your copy of the book. ■

Guidance you can rely upon!

The IFSP's PMLFT sub-committee has completed a new set of *Guidance Notes on the Prevention of Money Laundering and Funding of Terrorism*. The regulations laying out the measures practitioners must take to help authorities stop financial crime are complex and in continuous evolution. Their completion, making them the first of their kind in Malta, is very welcome.

Drafting is now complete on this document. Members have received a copy in draft form – because it has not yet achieved its definitive, final form. The same draft has been submitted to the Financial Intelligence Analysis Unit, which is vetting the publication. Given the possible consequences of getting it wrong, there can be few complaints about that!

The *Guidance Notes* is the fruit of the combined labours of some of Malta's most experienced practitioners. It promises to become the touchstone of best practice in the area. It takes a practical approach to the problem, indicating what every financial services practitioner needs to do to ensure he really does know his client, at least to the extent required by the law.

The new regulations, based upon the EU's Third Anti-Money Laundering Directive, are not an easy read. After understanding what it is they say, the practitioner still needs to then work out how the regulations should be put into practice. This is where the IFSP has stepped in. The PMLFT Sub-Committee has been through the regulations and produced a guide practitioners can rely upon.

As soon as the IFSP publication gets its imprimatur from the FIAU, the final, definitive version – without the big "DRAFT" watermark – will be distributed to all members. More than this, the PMLFT Sub-Committee will be leading the way with a seminar to introduce all members to the intricacies of the regulations.

Currently, this is likely to be sometime in March. ■

EU proposes new financial services regulatory structure

European financial services will soon be operating within a new, Europe-wide regulatory landscape. In a response to the financial crisis of the past two years, the European Commission proposed a two-tiered European regulatory structure, to sit atop the existing national regulators. That proposal has just been accepted by the European Council and is now awaiting approval by the European Parliament.



Jean-Claude Trichet making a point at the ECOFIN meeting last December, before the EU's finance ministers referred the package to the European Parliament *Photo: European Council*

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The new framework does not appear to be facing any significant problems. The four documents involved are expected to be adopted by the Economics and Monetary Affairs Committee in a single reading, in March 2010 clearing the way for adoption by the plenary session of Parliament in June.

This does not mean that come July 2010, the regime will change overnight. The structures will take some time to be put in place. But when they are, Europe will have three transnational regulators, one each for banking, securities and investment, and insurance and pensions. Sitting on top of this there will be the top tier of the new edifice: the European Systemic Risk Board.

The move is an attempt to provide a permanent line of defense against future systemic financial crises. The only completely new body is the ESRB; the European Supervisory Authorities (ESAs) are a significant evolution of the bodies already in place: CEBS, CESR and CEIOPS. In their

evolved form, their structure will change a little and they will get the ability to make binding decisions. They will also take on responsibility for the regulation of credit rating agencies.

This development has been designed to cure a number of problems, all with a common theme. First, there is what the Commission called a lack of coordination between financial regulation practice across European states, and second a tendency of the national regulators to concentrate on the viability of individual firms rather than the industry, thus ignoring the interconnectedness of financial institutions.

This has led to a rather "unhealthy" competition between regulatory regimes, in the Commission's wording. It has also allowed the development of the recent large scale systemic crisis, something that the Commission and Council would very much like to ensure will not happen again.

In the new regulatory landscape, the national regulators will keep their "micro-prudential" role, continuing to regulate individual firms. Together with the ESAs, they will form the European System of Financial Supervisors (ESFS). The ESAs, pulling together representatives of the national regulator in their specific field of competence, will look at the European aspect of micro-prudential supervision.

In effect, this means they are there to ensure that European rules are adhered to in

every action taken by the national regulators, and any recommendation to right a particular error in implementation or interpretation they make is binding. The decisions can, however, be challenged in court.

Furthermore, the ESAs are expected to have a role in resolving conflicts between different European jurisdictions, and are expected to be charged with developing Europe-wide technical standards. There are other powers they will be getting, but these form the core: the attempt here is to achieve consistent regulation across the entire market. The one area the new bodies will not have any say over is direct taxation: that remains the sole prerogative of the individual member states.

The ESRB is a very different animal altogether. Its scope of action is "macro-prudential", keeping a look out for threats to the EU's entire financial infrastructure. It has a complex make-up as well: a combination of voting and non-voting members, the Governors of the European Central Banks, plus the President of the ECB, representatives from each of the national regulatory authorities, representatives from the European Commission and from each of the ESAs, plus a few other people.

This is an unwieldy committee, not suited to decisive action as the text of the directives itself points out. So there is also a management committee, a subset of the whole, and a technical advice committee bringing a whole different dimension into play.

It is, admittedly, a complex setup. The proposed structure has, in fact, attracted quite a bit of criticism. For all that, the aim is a good one and, assuming it functions effectively it should do its job, ensuring Europe's different financial systems mesh together seamlessly while warding off excess instability.

However, what exactly this new regulatory regime will mean for specific countries, or for individual firms and practitioners is far from clear. Will greater, centrally-imposed standardization mean less innovation, less willingness or ability to flexibly find solutions to evolving problems?

It is too early to say. The course of the discussion on the texts at committee stage at Parliament will be worth following, but in the end we may need to wait until the system is up and running to evaluate what it will mean.

In the meantime, if anyone would like to read through the proposed directive texts or the European Commission's preparatory study, contact the Secretariat for copies. 