



Malta

Juanita Brockdorff

KPMG in Malta

—

24 June, 2016



Agenda



- 1 **Maltese System**
- 2 **Fiscal Representation**
- 3 **Global Programmes**
- 4 **Location of risk**
- 5 **Marine Liability**



Maltese system

The Duty on Documents and Transfers Act

General rule

- Malta charges stamp duty arising on the issue of a contract of insurance, or its endorsement, irrespective of wherever such policy is executed or used
- Malta excludes from duty any contract of insurance where the risk is located outside Malta

Life Insurance

- Renewable
- Non-renewable

Exemptions

- Aviation (including injury to passenger, aircraft liability, cargo, aircraft hull)
- Marine cargo
- Marine hull or boat
- Credit (including insolvency, export credit, instalment credit, mortgages, agricultural credit)
- Suretyship
- Medical cover

Applicable rates

Renewable life insurance policies

With effect from 1 February 2015

Premium Amount		Rate
€0	€11.64	10%
€11.65	€116.50	€11.65
€116.51	-	10%

Non-renewable life insurance policies

Subject to stamp duty at a rate of 10 cents every EUR 100 or part thereof of the sum assured

Other cases

With effect from 1 February 2015

Premium Amount		Rate
€0	€12.99	11%
€13	€118.99	€13
€119	-	11%

Endorsements

Any endorsement is chargeable as though a new policy had been entered into, but only if the endorsement makes a change to:

- person or thing insured
- risk insured
- duration of the policy

- Where an endorsement increases the amount of the insurance, or of the premium, duty is payable on the insurance policy as endorsed, with a credit for any duty which would have already been previously paid

- All other endorsements (including those for minor changes) €2.33 duty due

Classes of Insurance

Stamp duty rate: 11%

- Accident (including industrial injury and occupational diseases)
- Sickness
- Land Vehicles
- Fire and natural forces
- Other damages to property
- Motor vehicle liability
- General liability
- Miscellaneous financial loss
- Goods in transit (including merchandise, baggage, and all other goods)
- Legal expenses (including costs of litigation)
- Assistance (for persons who get into difficulties while travelling and in other circumstances)

Hybrid policies

Fragmentation of each risk covered by the policy in order to allocate the appropriate stamp duty rate to each risk (11% or Exempt)

E.g. **Marine Insurance policy covering the ship (exempt), while cover for passengers (11%)**

Policies cancellation – Negative premium

- Duty becomes payable as soon as a policy of insurance covering risks located in Malta is executed, that is written

- At present, Maltese law does not take into account negative premiums. Submissions have been made at the highest levels, data collection stage

- Once duty is paid, no tax refund is given for any subsequent negative premiums

- However, in practice a refund may be available when the policy was issued and cancelled during the same quarter

Road assistance - The consequences of the Mapfre case

- *The EU Mapfre Warranty* case renewed the focus on the boundary between taxable service contracts and exempt contracts of insurance, with certain services that were taxable warranties in the past, henceforth qualifying as VAT exempt insurance services, even when they are supplied by persons who are not treated as insurers for regulatory purposes (*Insurance Business Act*)
 - Following the EU judgement, on 20th July 2015 the VAT Department issued *Guidelines for the VAT treatment of Road Assistance Services* providing some detail on the implications on suppliers of road assistance warranties
 - With effect from 17 July 2015, road assistance services provided through a subscription/membership package ('road assistance warranties') are exempt from VAT in Malta (without credit). The exemption does not cover services of road assistance (such as towing, tyre change, repairs, etc.) provided at a fee on an ad hoc basis and which are not covered by a subscription/membership package
-
- From a Maltese stamp duty perspective, road assistance services provided for a fixed subscription, by a person who undertakes to provide such assistance should the risk of breakdown or accident covered by that person materialise by deduction will be considered **insurance services** under the *Duty on Documents and Transfers Act*, and as such will be subject to stamp duty



Fiscal representation

The Fiscal Representatives (Financial Services Undertakings Exercising a European Right) Regulations - Revoked

The Maltese legal requirement for any European credit institution, European insurance undertaking or European investment firm which, in exercise of a European right, seeks to provide services in Malta without having a place of business in Malta and without being resident in Malta, to appoint a fiscal representative to act on its behalf has been **removed** by Legal Notice 3 of 2016, *Fiscal Representatives (Financial Services Undertakings Exercising a European Right) (Revocation) Regulations 2016*, issued on 5 January 2016. Revocation had immediate effect

As a result, a **compounding authorisation** previously obtained by KPMG as fiscal representative of an undertaking would no longer apply vis-à-vis the respective undertaking with the consequent effect that the respective undertaking will be required to submit monthly reports with the insurance policies with risk situated in Malta, and to effect payment of stamp duty as required, within 15 working days from the end of the relevant month



Global programme

Global insurance programmes

In the case of a Master policy, a global premium may be allocated between several covered jurisdictions dependant on the risk insured in the respective jurisdiction

- Where a policy is issued for the first time at a global level and the premium is allocated among countries including Malta, such newly issued policy (excluding life) is chargeable 11%
- Reallocation of premium following the issue date of the policy:
 - a) **Global premium remains unchanged** – Where there is simply a reallocation of premium between the individual countries (including Malta) and such reallocation has any other effect than a change of person, risk or duration in the master policy, in terms of Maltese law, the reallocation is treated as an endorsement and the stamp duty due on the *endorsement should be at the flat amount of € 2.33*
 - b) **Global policy has changed** – Where the global premium increases due to a change in the insured person, duration or risk in the master policy, reallocation of the premium between the individual countries should be treated as an *endorsement subject to duty at a rate of 11% on the full Maltese premium (the policy as endorsed)*, with credit for any stamp duty previously paid in respect of the same policy



Co-insurance

Co-insurance

The law is silent

Guidance is available:

The Malta Insurance Association had issued guidance addressed to local insurers which provides that in a co-insurance arrangement:

The **leader** should assume the obligation to comply with the document duty requirements and ensure that the collective duty paid to the Maltese tax authorities does not fall below or over the document duty requirements in terms of Maltese law

Guidance is silent on co-insurance arrangement between cross-border entities





Group policies

Group insurance policies

The law is silent

Guidance is available:

Guidance issued by the Malta Insurance Association provides that any applicable minimum duty is chargeable by reference to a **policy** and not by reference to the persons insured thereunder and is computed on the **total premium charged**

This is of particular relevance where more than one person is insured under an umbrella policy





Location of risk

Risk is situated in Malta

Buildings or buildings and their contents



Any risk related to property **situated** in Malta (in so far as the contents are covered by the same insurance policy)

Vehicles



Any risk related to any vehicles **registered** in Malta,
but where a vehicle is dispatched from EU/EEA into Malta, the risk is deemed to be situated in Malta, immediately upon acceptance of delivery by the purchaser for a period of 30 days, even though the vehicle has not been formally registered in Malta

Maltese law is silent on the term 'Vehicle'. Maltese tax authorities limit the interpretation of the term 'vehicle' solely to land vehicles

Risk is situated in Malta (cont.)

Travel/Holiday



Any risk related to travel or holiday if the policy covering the risk is of a duration of **four months or less** and the policy is taken out in Malta

Other risks



Any risk if the policyholder has his **habitual residence** in Malta or, where the policyholder is a legal person if the establishment to which the contract relates is situated in Malta



Marine liability

Stamp duty

1



- Maltese TAX law does not expound insurance classes potentially constituting marine liability cover

2



- Insurance classes which may be covered by a marine liability insurance policy:
 - a. Accident – Injury to passengers
 - b. Ships, all damages to or loss of river and canal vessels, lake vessels, sea vessels
 - c. Good in transit (including merchandise, baggage, and all other goods). All damage to, or loss of goods in transit, or baggage, irrespective of the form of transport
 - d. Liability for ships (sea, lake and river and canal vessels). All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability)

Stamp duty (cont.)

3



An insurance policy relative to marine liability is subject to stamp duty where the risks covered by the policy are situated in Malta

4



- The marine cargo or marine hull exemptions must be interpreted restrictively:
 - Marine cargo is limited to cargo on a sea-going vessel
 - Marine Hull or Boat covers solely the water vessel/boat itself
- Hybrid Insurance policies for marine liability covering various risks: Identification of each risk covered by the policy is recommended, fragmentation

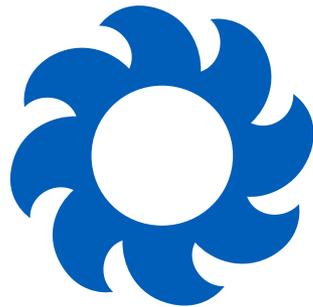
Location of risk

Depends on the place of registration of the vessel and not on the residence of the insured person

Risk NOT situated in Malta



In Malta

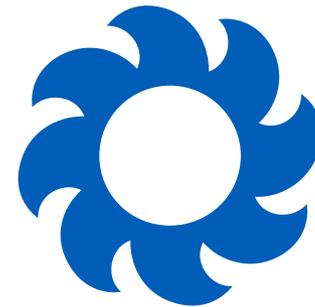


Registered outside Malta
Berthed/located in
Maltese waters

Risk situated in Malta



Outside Malta



Registered in Malta
Berthed/located anywhere
other than Maltese waters

Stamp duty – Interplay with Tonnage tax

Tonnage tax exemption



- The tonnage tax exemption applicable to shipping organisations does not entitle shipping organisation to a blanket exemption from stamp duty applicable to any act, document or transaction which may be undertaken, issued or executed

Stamp duty exemption



- Rule 5, Subsidiary Legislation 234.43: a shipping organisation in possession of a tonnage tax exemption is exempt from stamp duty solely on:
 - Registration of a tonnage tax ship and other registrations relating to it
 - Issue or allotment of any security/interest of a licensed shipping organisation, or the purchase/transfer/assignment/negotiation of any security/interest of a licensed shipping organisation or other company as indicated in the said subsidiary legislation
 - Sale/transfer of a tonnage tax ship or any share thereof
 - Registration of any mortgage/other charge over or in relation to any ship or licensed shipping organisation, any transfer/discharge thereof, any receipt relative thereto, and any assignments granted in connection therewith
 - Assignment of any rights and interests, or the assumption of obligations in respect of any ship or share thereof

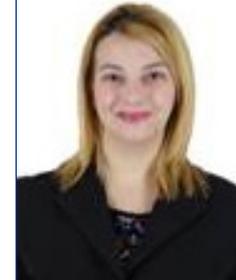
Our team



Juanita Brockdorff
Partner
M: +356 2563 1148
E: juanitabrockdorff@kpmg.com.mt



Analise Galea
Manager
M: +356 2563 1164
E: analisegalea@kpmg.com.mt



Luisa Gauci
Assistant Advisor
M: +356 2563 1229
E: luisagauci@kpmg.com.mt



Thank you



kpmg.com/socialmedia



© 2016 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are registered trademarks or trademarks of KPMG International. | Create KGS: CRT063554A