

# **STEP JOURNAL**

Downloaded on 7th October 2024 - 05:20

## **Kin win**

Dr Jean-Philippe Chetcuti reports on Malta's first Family Business Act.

Family businesses constitute a significant section of many economies, making up 35 per cent of businesses in Switzerland, 80 per cent in Malta and 90 per cent in Turkey. In recent years Maltese legislation has emerged that focuses on supporting small businesses, such as the *Small Business Act*, but this has not addressed the challenges faced by family businesses in the 21st century. This, however, is set to change, as Malta is gearing up to enact the *Family Business Act*.

## Difficulties to overcome

Maltese family businesses face many challenges, including governance issues that hamper professional management; high tax costs and cash flow problems associated with their transfers; and the potentially sudden and crippling shift from one generation to another. The Maltese *Income Tax Act* exempts capital gains on transfers of immovable property, shares, businesses, goodwill and intellectual property only in the case of a donation between family members, as defined therein. The transferee is liable to stamp duty and is afforded no exemption. At 5 per cent, stamp duty acts as a major disincentive to family members, as this is reduced to 2 per cent only for transfers of marketable securities.

## MAFE

Against this backdrop, the Malta Association of Family Enterprises (MAFE)[1](#) was set up in 2011 to offer education and training to family businesses in Malta. MAFE also provides a voice for the family-business sector and works with stakeholders at a national and international level. MAFE has found support with both government and opposition and its work has culminated in a governmental pledge to legislate a *Family Business Act* by early 2014.

## *Family Business Act*

MAFE has suggested that the *Family Business Act* introduce provisions that seek to overcome the three main challenges family businesses currently face. The first initiative looks to introduce a much-awaited definition of 'family business' and to provide a framework for gathering and analysing data relevant to the sector. This will serve as a basis for better understanding family businesses and will help to determine eligibility for special benefits bestowed on family businesses by the Act.

The second proposal seeks to create a fiscal framework for the reduction or deferral of taxes applicable at the transfer of shares *inter vivos* or *causa mortis* between generations of business families, or the extension of exemptions already applicable for transfers in the case of non-resident shareholders.

The third proposal aims to provide public co-funding of training and consultancy in family and business governance, and succession planning for qualifying family businesses, family members and employees.

The eligibility rules proposed by MAFE are intended to limit the benefits contemplated above to 'eligible family businesses', that is, family businesses that have taken reasonable identifiable steps in the direction of proper governance and succession planning, as encouraged by the *Family Business Act*.

## Opportunities for international families

At an international level, Malta provides a family-friendly environment for business governance and wealth management, complemented by a legal framework and professional infrastructure for the management of trusts and companies. The *Trusts and Trustees Act* and Malta's law on foundations provide flexible tools for asset protection and the running of family businesses on an international scale. Furthermore, Malta's favourable tax environment includes the absence of withholding taxes on dividends, royalties and interest, as well as tax exemptions for dividend income and capital gains arising on the transfer of participating holdings. A similar exemption also applies to stamp duty otherwise applicable on the acquisition of shares in Maltese companies.

Malta has established itself as an attractive platform for family-business governance and family-office management. The enactment of the upcoming *Family Business Act* will hopefully ensure that family businesses prosper.

## STEP Malta Conference

The STEP Malta Conference, 'Global Business in a Challenging Environment - Changing Perspectives', will take place at the Hilton Hotel in St Julians on 6-7 March 2014. Topics include challenges for future regulations, corporate structuring through Malta, the changing UK tax environment for high-net-worth individuals and EU cross-border succession.

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• [1mafe.org.mt](http://1mafe.org.mt)

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