



## ANNUAL OBLIGATIONS OF A MALTA COMPANY

2016

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## **A. AUDITED FINANCIAL STATEMENTS FILED WITH THE REGISTRAR OF COMPANIES**

The company must prepare and submit **annually** to the Registrar of Companies, Financial Statements according to International Financial Reporting Standards (IFRS) showing the true and fair picture of the affairs of the company and explaining its transactions. Even if the company had no operations for a particular year or is only a holding company, it is obliged to prepare and file financial statements AND tax returns as specified below.

### **Time Frames and Time Limits**

#### **(I) Accounting Reference Dates**

A company's accounting periods are determined by reference to its accounting reference date. The default accounting reference date is the 31 December. However, a company may, within 9 months from its date of registration, give notice in the prescribed form to the Registrar specifying a date in the calendar year as being its accounting reference date.

The company's first accounting reference period shall be that period starting from the date of registration and ending with its accounting reference date. This period cannot be less than 6 months and not more than 18 months. By way of explanation, if the accounting reference date is 31 December and the company was incorporated on the 15<sup>th</sup> November 2012, the first accounting reference period cover the period from 15<sup>th</sup> November 2012 to 31 December 2013.

The following accounting reference periods shall be the successive period of 12 months beginning after the end of the first accounting reference period and ending with the accounting reference date.

(II) Approval and Signing of the Accounts

The audited financial statements must be approved signed at the General Meeting by a minimum of two directors (unless the company has only one director) within 10 months of the accounting reference date. In the case of a public company, the time-limit is 7 months after the end of the accounting reference date.

In the cases when the date of incorporation of the company falls in the second semester of the year (i.e. July to December), the time period for the approval by the directors (i.e. 10 months or 7 months) starts running from the date of anniversary of the company's registration and not from the end of the accounting reference period. Thus, in the above example of the Company incorporate on the 15<sup>th</sup> November 2012, the 10 month period will start running from the 15<sup>th</sup> November 2013, and not from the end of the first accounting reference period (i.e. 31 December 2013).

These time-limits are however subject to some modifications. If a company carries on business, or has business interest to the extent of 90% outside Malta, the directors may give to the Registrar of Companies notice in the prescribed form claiming an extension of the period to 18 months.

(III) Filing of the Accounts with the Registrar of Companies

The directors are obliged to deliver to the Registrar for registration a copy of the company's annual accounts as laid before the company in General Meeting (together with a copy of the auditors' report and the directors' report) within 42 days from the period prescribed for the approval and signing of accounts (i.e. 10 months in case of private companies and 7 months in case of public companies).

**Abridged Annual Accounts**

The directors of the company are entitled to deliver to the Registrar abridged annual accounts if on the company's balance sheet date, it does not exceed the limits of 2 of the 3 following criteria:

1. balance sheet total: €2,562,310.74;
2. turnover: €5,124,621.48;
3. average number of employees during the accounting period: 50.

### **Consolidated Financial Statements**

Malta companies which have subsidiaries must consolidate their audited financial statements with the financial statements of their subsidiaries according to IFRS.

The above obligation does not apply if the group meets the requirements of the law to be qualified as a small group amongst others.

### **Penalties for non-compliance**

Failure to file the above accounts with the Registrar will automatically result in the following penalties:

1. A one-time sum of €23.29 and
2. A daily penalty of €0.47 for every day until compliance.

The Registrar is empowered under Companies Law to strike-off any company if it fails to file the accounts for a number of consecutive years.

The company officers are liable to ensure compliance with the Company Law requirements and for the truthfulness and correctness of the company accounts.

### **B. TAX RETURNS FILED WITH THE INCOME TAX AUTHORITIES**

Every company subject to Maltese tax must register with the Maltese tax authorities. The company must prepare and file **annually** with the Income Tax Authorities tax returns prepared by local licensed auditors. These are submitted electronically by the auditors. In order for the auditors to prepare the audited tax returns demanded by the Income Tax Authorities, audited financial statements must be prepared.

### **Documents to be provided**

Full disclosure of the operations / activities of the company for the year under consideration must be submitted to the accountants / auditors of the company in time, in order to meet the time limits for the preparation and filing of the relevant financial statements and tax returns.

### **Time frames and Time Limits**

The Income Tax Return for companies that their financial year ends on 31 December must be submitted by the end of September of the following year.. Companies with financial year end other than the 31 December, must file their tax return by the end of the 9<sup>th</sup> month after their accounting date, or by the 31 March of the calendar year following the accounting date, whichever is the later.

### **Payment of Provisional Tax**

It is important to keep into account that whenever a company has 90% of its business outside Malta, the company may apply for an exemption in order to be exempt from the payment of the provisional tax.

Otherwise, companies must pay provisional tax on the following dates:

- **30 April**, equivalent to 20% of the total Provisional Tax payment
- **31 August**, equivalent to 30% of the total Provisional Tax payment
- **21 December**, equivalent to 50% of the total Provisional Tax payment.

As such, the total provisional tax due is an amount equal to the tax chargeable as filled in the last return. The tax authorities have the right to increase the amount. The provisional tax payments are then credited against the tax liability on the total income.

## Non-compliance with the above obligations

In case of non-compliance with the above obligations, the Income Tax Authorities may take criminal court proceedings against the company and its officers (directors and/or company secretary) and the company will face penalties for no or late filings. There are 2 types of penalties:

- (I) Penalties for **omission** (under-declaration of tax due or over-claiming deductions/allowance or credits); and
- (II) Penalties for **late** submission of tax return.

### (I) Penalties for Omission

This penalty consists in 2 consequences:

1. A 0.75% interest per month on the outstanding tax, and
2. An additional tax is chargeable at the rate of 1.5% per month of the endangered tax except for the following circumstances:
  - a. Where a person rectifies an omission within 12 months from the tax return date and such person was not notified that an audit enquiry will be conducted;
  - b. Where a person rectifies an omission after 12 months from the tax date and such person was not notified that an audit enquiry will be conducted, the omission tax shall be calculated at the rate of 0.1%;
  - c. If a person has been notified that an audit enquiry will be carried out, but an assessment has not been issued, the additional tax shall be calculated at the rate of 0.75%;
  - d. Where a person has sought and relied upon the written advice of a tax professional, and has submitted the original advice with the tax return by the tax return date, that omission tax shall be fully remitted.
  - e. Where a person proves that the omission was not due to any fraud, art, contrivance, gross or wilful neglect, that omission tax shall be fully remitted.

The additional tax for an omission shall in no case be more than 60 times the applicable rate indicated above.

(II) Penalties for Late Submission of Tax Return and Tax Payment

The additional tax applicable for late submission of companies' returns is as follows:

<b>Number of Months Elapsed</b>	<b>Additional Tax</b>
<b>Within 6 months</b>	€50
<b>Later than 6 but within 12 months</b>	€200
<b>Later than 12 but within 18 months</b>	€400
<b>Later than 18 but within 24 months</b>	€600
<b>Later than 24 but within 36 months</b>	€800
<b>Later than 36 but within 48 months</b>	€1,000
<b>Later than 48 but within 60 months</b>	€1,200
<b>Later than 60 months</b>	€1,500

## **C. TAX OBLIGATIONS FOR TAX RESIDENT COMPANIES AS EMPLOYERS**

### **Final Settlement Tax**

Whenever the Maltese company has employees, the directors must register both the company and the employee with the Employment and Training Corporation (ETC) and the Tax Authorities at the commencement of the period of employment. The Company will be given an Employer Number by both the ETC and the Tax Authorities.

The company officials will then have the responsibility to ensure payment of the Final Settlement Tax. This is Malta's version of the PAYE system and obliges employers to deduct tax from wages of their employees as well as to contribute payment to a retirement pension (i.e. Social Security Contributions).

The amount of tax payable on behalf of the employee depends on the yearly income of the employee as well as to the residence of the employee.



The following table gives the rates of the employees for a single computation:

<b>Tax Rate</b>	<b>Total Yearly Income of Resident Employee</b>	<b>Tax Rate</b>	<b>Total Yearly Income of Non-Resident Employee</b>
0%	For first €9,100	0%	For first €700
15%	€9,101 – €14,500	20%	€701 – €3,100
25%	€14,501 – €60,000	30%	€3,101 – €7,800
35%	Any sums over €60,000	35%	Any sums over €7,800

On the other hand, the following table gives the rates applicable for a married couple resident in Malta, i.e. the joint computation:

<b>Tax Rate</b>	<b>Total Yearly Income of Resident Employee</b>
0%	For first €12,700
15%	€12,701 – €21,200
25%	€21,201 – €60,000
35%	Any sums over €60,000

There are no joint-computation rates for non-resident persons, and hence, individual rates must be computed.

### **New amended regulations for Non-Residents deriving Income in Malta**

Please note that resident rates shall apply in the case of an individual who is a national of an EU / EEA State who derives at least 90% of his worldwide income in Malta.

Whenever a married couple opts for a joint-computation, such an EU / EEA individual may qualify for Resident Rates even where his or her spouse is not resident in Malta provided that at least 90% of the couple's world-wide income is derived from Malta.

However, it is also important to take into account that whenever the resident rates apply, any benefits applicable to the non-residents shall no longer be available. Such

benefits include exemptions (e.g. on withholding tax on dividends, interest and royalties), as well as tax refunds (6/7<sup>th</sup>, 5/7<sup>th</sup> etc).

If the EU / EEA individual does not qualify under the resident rates, the non-resident rates shall apply. However, the income that will be subject to such non-resident rates will be calculated as per the following formula:

**(Malta source income / worldwide income) \* Resident Tax Rate on World Income**

### **Social Security**

On the other hand, the amount to be deducted for Social Security depends on the age of the person and the weekly wage. Please consult Appendix A on page 12 of this brochure for a thorough review of the Social Security Contributions (SCC).

The following Forms must be submitted to the Tax Authorities:

<b>Form</b>	<b>Description</b>	<b>Submission Date</b>
FS 3	Statement of all earnings	End of January and whenever there is termination of employment.
FS 4	Details of employee and employer and description of type of income	At the start of employment – in case of default, emoluments are subject to tax deduction at 35% - until default continues. Also, payer is liable to payment of any under deduction of tax as a result of default.
FS 5	Monthly tax and SCC payment	End of the following month.
FS 7	Annual Reconciliation Statement	15 February of the following year

## **D. OTHER MISCELLANEOUS TAX OBLIGATIONS**

### **Final Withholding Tax on Investment Income Payable to Maltese Residents**

Investment income payable to Maltese residents is subject to a 15% final withholding tax. No further tax is payable and such individuals have the possibility of not reporting this income in their tax returns.

However the Maltese residents have the added choice of requesting the payment of investment income without withholding tax after which they will be required to report this income in their respective tax return.

Any investment income payable to non-residents is not subject to any withholding tax.

### **Payments to non-Residents**

The general rule is that non-Maltese residents are exempt from any withholding taxes on dividends, interest, royalties, investment income and capital gains.

Other than this, any payments to non-residents of income chargeable to Maltese tax are subject to withholding tax at 35% if the non-resident is a company and 25% in other cases. The tax withheld under these provisions is not final and if the non-resident declares the income in a tax return, the tax withheld is granted as a credit and any excess credit is refundable.

Any such tax is due within 30 days from the making of the deduction to the Maltese Tax Authorities. The payer has the duty and full responsibility to withhold tax. Any person failing to deduct this tax will be liable to the tax due together with a sum equivalent to twice the tax in question.

## **E. ANNUAL GENERAL MEETING (AGM)**

The company must hold an Annual General Meeting **each year**. No more than 15 months must lapse between one AGM and the following one.

The first AGM may be held within a time limit of 18 months from the incorporation of the company. If a company holds its first AGM within 18 months from its incorporation, then there is no need to hold this first AGM during the year of its incorporation or the subsequent year.

The ordinary business that is usually transacted (though not limited to) in an AGM is:

1. Receiving and Adopting of the Annual Accounts;
2. Declaring a Dividend and
3. Reappointing Directors and Auditors.

## **F. ANNUAL RETURN FILED WITH THE REGISTRAR OF COMPANIES**

Every company must prepare and file with the Registry of Companies an Annual Return once a year in the prescribed form which includes, among others, information as to the registered office of the company, registered shareholders, debentures, share capital, directors and secretary.

The Annual Return can be signed and filed either by one of the Directors or by the Company Secretary.

The company must prepare its Annual Return and submit it to the Registry of Companies within 42 days of the anniversary of the incorporation of the company. Together with the Annual Return, the company must pay the Annual Registry Fees as described below.

Non-compliance with the above time frames will automatically result in the following penalties:

1. A one-time sum of €23.00 and
2. A daily penalty of €0.47 for every day of non-compliance.

The Registrar is empowered under Companies Law to strike-off any company if it fails to file the Annual Return for a number of consecutive years.

### **Annual Registry Fees**

Together with the Annual Return, the following Annual Registry Fees must be paid to the Registry of Companies. The fees depend on the share capital of the company and are prescribed as follows:

<b>Share Capital</b>	<b>Annual Registry Fee</b>
Does not exceed €1,500	€100
<b>€1,501 – €5,000</b>	€140
<b>€5,001 – €10,000</b>	€160
<b>€10,001 – €50,000</b>	€350
<b>€50,001 – €100,000</b>	€400
<b>€100,001 – €250,000</b>	€600
<b>€250,001 – €500,000</b>	€800
<b>€500,001 – €1,000,000</b>	€900
<b>€1,000,001 – €2,500,000</b>	€1,200
<b>Exceeds €2,500,000</b>	€1,400

## **G. VAT Obligations**

### **Registration**

A company registered in Malta is required to register for VAT within 30 days from the date when it makes a taxable or exempt with credit supply.

If the annual taxable turnover exceeds €14,000 per year, it will be required to register and account for Maltese VAT. If the turnover per year is in excess of EUR7,000 per annum, one is still required to register for VAT but one may opt out of the VAT system (whereby no VAT will be charged but one will not be entitled to claim any input VAT back).

**VAT Returns**

VAT in Malta is payable for every quarter (i.e. every three months) via a VAT Return in the prescribed form. The VAT Return has to be filled-in, signed and paid by the 15<sup>th</sup> day of the second month following the end of the tax period. By way of example, if the first Quarter covers the period 1<sup>st</sup> January to 31<sup>st</sup> March, the VAT return for the 1<sup>st</sup> Quarter must be signed, submitted and paid by the 15<sup>th</sup> May.

Upon receipt of the VAT Certificate following the application for a VAT number, the VAT Authorities will indicate and assign the particular Quarters relevant to the company.

The company officers (Directors and Company Secretary) have the responsibility and duty to file the VAT returns on time. The Company Officers are personally liable for such filings.

**Non-Compliance / Late Filings**

Late filings of VAT Returns are subject to an administrative penalty equivalent to the higher of:

- 1% of V.A.T. payable on such a return, and
- €20

for every month or part thereof that elapse from due date to actual date of filing subject to a maximum of €250 per VAT return.

Additional interest at 0.75% per month or part thereof will be chargeable in case of late payment. The Commissioner may also deem a return as not filed if payment is not made with such a return.

Together with the above, non-compliance with the VAT laws will result in a criminal offence and will be prosecuted accordingly.

**Recapitulative Statements**

In addition to the VAT returns, Recapitulative Statements may have to be submitted electronically by authorised managers as appointed by the Company.

A recapitulative statement is a periodical statement required to be made by suppliers in Malta who make intra-Community supplies of goods or services to customers identified with a valid VAT Registration number in another Member State.

Recapitulative Statements have to be drawn up for each calendar month and are to be submitted on-line to the VAT Department by not later than the 15<sup>th</sup> day of the month following the relative calendar month.

Failure to submit a Recapitulative Statement will result in an administrative penalty and a criminal offence in terms of Maltese VAT law.

**H. DISCLAIMER**

This publication has been prepared as a general guide and for information purposes only. It is not a substitution for professional advice. One must not rely on it without receiving independent advice based on the particular facts of his/her own case. No responsibility can be accepted by the authors or the publishers for any loss occasioned by acting or refraining from acting on the basis of this publication.

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## I. APPENDIX A - Class 1 Social Security Contributions<sup>1</sup>

Category	Description
<b>A</b>	Persons under 18 years of age earning not more than the amount indicated in the next table.
<b>B</b>	Persons aged 18 years and over earning not more than the amount indicated in the next table
<b>C</b>	All persons whose basic weekly wage is between the amounts indicated below.
<b>D</b>	All persons whose basic weekly wage is equal to or exceeds the amount indicated below.
<b>E</b>	Students under 18 years of age.
<b>F</b>	Students 18 years or older

Category	Basic Weekly Wage €		Weekly Rate Payable €		
	From	To	By Employee	By Employer	Total
<b>A</b>	32.40	162.19	6.62	6.62	13.24
<b>B</b>	32.40	162.19	16.22	16.22	32.44
<i>Persons born up to 31/12/1961</i>					
<b>C</b>	162.20	339.04	10%	10%	n/a
<b>D</b>	339.05	n/a	33.90	33.90	67.80
<i>Persons born from 01/01/1962</i>					
<b>C</b>	162.20	403.15	10%	10%	n/a
<b>D</b>	403.16	n/a	40.32	40.32	80.64
<b>E</b>	n/a	n/a	10% max 4.38	10% max 4.38	n/a
<b>F</b>	n/a	n/a	10% max 7.94	10% max 7.94	n/a

<sup>1</sup> Class 2 Social Security Contributions relate to self-employed persons which is outside the scope of this publication.



## **The Firm**

Kinanis Fiduciaries Limited is a Maltese corporate service provider specializing in corporate and tax advice excelling in providing the international investor with a one-stop-shop solution in doing business through Malta.

## **The Services**

- Company Incorporations & Management
- Taxation
- Accounting & VAT
- Aircraft, Ship and Yacht Registration
- Trusts Formation
- Investment Fund License Application & Set Up
- Remote Gaming License Applications
- Intellectual Property
- Opening & Management of Bank Accounts

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