

Taxation of Maltese Holding Companies

Malta is a very attractive jurisdiction in which to set up a corporate vehicle to hold one's own investments. Malta's domestic tax system, which includes a participation exemption on dividends and capital gains derived from certain holdings ensure that Malta is a prime EU location in which one can hold foreign investments through a Maltese Holding Company.

A company that is registered in Malta may be entitled to claim an exemption (referred to as the participation exemption) in respect of income (e.g. dividends) that the company derives from a "participating holding" subject to the satisfaction of certain conditions. The exemption may also be claimed by the company in respect of gains that it derives from the transfer of a participating holding.

Claiming the participation exemption is optional and accordingly, a company registered in Malta has a right not to apply the participation exemption and to declare the income or gain derived from the participating holding in its income tax return. If the income or gain is declared by the company in its return, the company would be required to pay income tax at the rate of 35%. Should the company opt to claim the exemption, the company would not declare the income in its income tax return. The exempted income or gain will be allocated by the company to the Final Tax Account.

Participating Holding

A participating holding must consist of:

- (i) a holding of the share capital in a company which is not a property company, or
- (ii) a holding in a Maltese partnership *en commandite* whose capital is not divided into shares (or a holding in foreign partnership that is similar in nature to such a Maltese partnership) which is not a property partnership, or
- (iii) a holding in a collective investment vehicle (CIV) which is constituted outside of Malta and which is not resident in Malta, where the liability of investors in the vehicle is limited to the amount invested.

The said holding must in turn entitle the company that holds it to at least any two of the following rights (referred to as 'equity holding rights') in the company, partnership or CIV:

- (i) a right to vote;
- (ii) a right to profits available for distribution;
- (iii) a right to assets available for distribution on a winding up of that company, partnership or CIV.

Once it has been established that a holding is an "equity holding", the said holding can qualify as a "participating holding" if any **one** of the following conditions are satisfied:

(a) the holding constitutes at least 10% of the equity shares AND confers an entitlement to the company holding the said equity holding of at least 10% of two of the three equity holding rights (i.e. votes, profits available for distribution and assets available for distribution on a winding up);

(b) the company that owns the equity holding also holds an option to acquire the remaining equity holding that it does not own to the extent permitted by the law of the country of the company, partnership or CIV;

(c) the company that owns the equity holding has pre-emption rights over the remaining equity holding that it does not own (i.e. where the other holders of the equity holding wish to dispose, redeem or cancel their equity holding, they must first offer their equity holding to the company);

(d) the company that owns the equity holding is entitled to either sit or appoint a person to sit on the Board (or equivalent body) of the company, partnership or CIV;

(e) the equity holding represents a total value, as on the date or dates on which it was acquired, of €1,164,000 (or the equivalent sum in a foreign currency) and that holding in the company, partnership or CIV is held for an uninterrupted period of not less than 183 days;

(f) the company that owns the equity holding has acquired such holding for the furtherance of its own business and the holding is not held as trading stock for the purpose of a trade.

Claiming the participation exemption on a gain arising from the transfer of a participating holding

Once a holding in a company, limited partnership or CIV qualifies as a participating holding, then a company registered in Malta that derives a gain from the transfer of the said holding should be entitled to claim the participation exemption on the gain that it derives. Accordingly, if the company elects for the participation exemption, no income tax will be payable by the company on the said gain.

Claiming the participation exemption on dividends derived from the participating holding

In order for a company registered in Malta to be entitled to claim the participation exemption on income it derives from a participating holding (e.g. dividends if the holding consists of shares in a company), it is necessary for certain additional conditions to be satisfied by the company, limited partnership or CIV in which the participating holding is held.

The participation exemption cannot be claimed in respect of income derived from participating holdings in companies or limited partnerships that are resident in Malta. Accordingly, the participation exemption in respect of such holdings can only be claimed in respect of gains arising from the transfer of such holdings.

In order to claim the participation exemption in respect of income from a participating holding, the company, limited partnership or CIV must meet **one** of the following three conditions:

(i) it is resident or incorporated in a country or territory which forms part of the European Union; **or**

(ii) it is subject to any foreign tax of at least fifteen per cent (15%); **or**

(iii) it does not have more than fifty per cent (50%) of its income derived from passive interest or royalties.

Where none of these three conditions are met, Maltese income tax legislation provides an alternative condition that may be satisfied in order for income from a participating holding to qualify for the participation exemption. This condition is considered to be satisfied if **both** the following tests are met:

(i) the participating holding held by the company registered in Malta is not part of a portfolio investment; **and**

(ii) the company, limited partnership or CIV in which the participating holding is held or the said entity's passive interest or royalties has been subject to any foreign tax at a rate which is not less than five per cent (5%).

Non-qualifying holdings

Where a holding does not qualify as a participating holding, any dividend or capital gain would be taxable at 35%. However a refund of 6/7ths will be paid back to the shareholder upon distribution of a dividend, resulting in a tax rate which is equivalent or lower than 5%.

Disposal of shares in a Malta holding company

Capital gains made by a non-resident shareholder on disposals of shares in a Maltese company are exempt from Maltese income tax unless the company principally owns immovable property situated in Malta.

Treaty network and EU directives

Malta has an extensive double taxation treaty network (more than 65 double taxation treaties in force). Malta is also a member of the European union and therefore Malta offers access to the EU Directives which include amongst other The Parent-Subsidiary Directive, the Interest and Royalties Directive, the Merger Directive together with the important freedom of establishment within the EU and the free movement of capital.

Other features of the Maltese tax system as applicable to a Maltese company

- (a) No CFC rules;
- (b) No thin capitalization rules;
- (c) No specific transfer pricing legislation;
- (d) No tax is withheld on outbound dividends, interest and royalties;
- (e) The full imputation system of tax on distribution of dividends meaning that no further tax is due by a shareholder on receipt of a dividend;
- (f) Possibility to surrender trading losses from one company to another;
- (g) Trading and capital losses are carried forward indefinitely;

- (h) Possibility to transfer certain capital assets from one company to another without payment of tax and stamp duty;
- (i) Interest and royalties are exempt from Maltese income tax when paid to non-residents
- (j) No capital duties;
- (k) No net worth taxes;
- (l) Various forms of relief from double taxation where double taxation treaty relief is not applicable;
- (m) The refundable tax credit system where a substantial part of the tax paid by a company is refunded back to the shareholder on distribution of a dividend.

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