



Malta as a holding company jurisdiction

Malta: An EU holding company solution

The introduction of the participation exemption in 2007 has enhanced Malta's position as a premier EU holding company location. Whilst there is no specific holding company regime, Malta's domestic tax system positions Malta as the ideal location for establishing companies for the purpose of holding shares in one or more entities whether located within or outside the European Union. Maltese holding companies are excellent gateways to and from the EU. Not being precluded from also carrying on 'non-holding' activities, Maltese companies provide a maximum degree of flexibility which provides opportunity for increasingly cost efficient solutions.

Malta income tax

Any income (dividends) or gains derived from a 'participating holding' in a company are wholly exempt from tax in Malta, provided that the relevant compliance requirements are met. Additional qualifying criteria apply in the case of dividend income derived from a participating holding in a non-EU company.

Participation exemption

A company registered in Malta would have a participating holding in, a resident or non-resident company which is a company which does not own, directly or indirectly, immovable property situated in Malta where the following conditions are satisfied:

- The shares held by the Malta company in the non- resident company qualify as 'equity shares', i.e. shares which carry the right to any two of the following:
 - i. Right to vote;
 - ii. Right to dividends; and
 - iii. Right to surplus assets in the event of the winding up of the resident and non-resident company.

- At least one of six additional qualifying criteria are met:
 1. A minimum shareholding requirement of 10% of the equity shares;
 2. A minimum investment in the company of €1,164,000 which is held for an uninterrupted period of six months;
 3. The right of the Malta company to, at its option, call for and acquire the balance of shares not held thereby;
 4. The entitlement of the Malta company to first refusal in the event of the proposed disposal, redemption or cancellation of all of the equity shares not held by it;
 5. The entitlement of the Malta company to sit on the Board or to appoint a person to sit on the Board of that company as a director; or
 6. That the shares in the company are held for the furtherance of the Malta company's own business provided that its shareholding does not represent stock in trade.

Dividends derived from a participating holding in an EU resident company are in all cases exempt from tax in Malta. However with effect from 1 January 2016, distributed profits received by a Malta company (or the permanent establishment in Malta of a company resident in another EU Member State) from a participating holding in a EU resident company, to which the Parent-Subsidiary Directive applies, would only qualify for application of the participation exemption in Malta to the extent that such distributed profits are not deductible by the subsidiary situated in the other EU Member State.

Dividends derived from a participating holding in a non-EU resident company are exempt from tax in Malta provided that at least one of the following additional criteria are satisfied, namely:

1. The said non-resident company derives less than 50% of its income from specific categories of interest or royalties;
2. The non-resident company is subject to tax at a rate of not less than 15%; or
3. The holding in the non-resident company is not a portfolio investment and that company is subject to tax at a rate of not less than 5%.

Alternatively, at the option of the Malta company, income or gains derived from a participating holding may be taxed at a flat rate of 35% less any available double taxation relief. In such circumstances, however, upon a subsequent distribution of dividends by the company out of the said taxed income or gains, the shareholder/s of the Malta company would be entitled to a full (100%) refund of the Malta tax originally paid. Relief for foreign tax suffered may be claimed either in the form of an ordinary credit for actual tax suffered outside Malta pursuant to one of Malta's double taxation treaties or in terms of Malta's system of unilateral relief, or alternatively in the form of a 25% notional flat rate foreign tax credit, where and as applicable.

Gains realised upon the disposal of a participating holding, or any part thereof, are similarly exempt from tax in Malta. It should be noted that with regard to a local "participating holding", the participation exemption regime extends only to a capital gain on its disposal and not to dividends received.

Non-qualifying holdings

Where a holding does not qualify as a participating holding any dividend or gain upon a disposal would be taxable at the level of the Maltese holding company at the rate of 35%. However, the application of the Malta tax payment and refund system would typically result in a combined overall Malta effective tax rate, for the company and its shareholder, of 5% or less.

Disposal of shares in the Malta company

Unless the Malta company's assets consist primarily of Maltese real estate, gains realised by any shareholder not resident in Malta upon the disposal of shares in a Maltese company are exempt from tax in Malta, provided that the shareholder is not directly or indirectly owned and controlled by, nor acts on behalf of, individual/s who are ordinarily resident and domiciled in Malta.

Duty

Whilst duty is generally chargeable on the transfer of marketable securities in or by a Maltese company, exemptions would typically apply so as to neutralise any local stamp duty exposure.

Treaty network and EU directives

Malta has a tax network of over 70 double taxation treaties currently in force (with most major countries). Additionally, by virtue of its membership of the EU, Malta offers access to the EU Parent-Subsidiary and Interest & Royalties directives and the fundamentally important freedom of establishment within the EU and the free movement of capital.

Other features

Typically, Malta does not levy a withholding tax on outbound dividend, interest and royalty payments and no capital duties or net worth taxes are imposed. Similarly, presently there are no CFC rules or thin capitalisation restrictions.

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