

The Maltese Participation Exemption and Participating Holding System

The Maltese Income Tax System exempts from tax income and/or capital gains derived by a company registered in Malta from a participating holding or from the disposal of such holding. The exemption is referred to as a 'Participation Exemption'. A participating holding is defined as the holding which arises when:

- (a) 'a company holds directly at least ten per cent of the equity shares of a company not resident in Malta whose capital is wholly or partly divided into shares: Provided that where the shares held confer different percentages of entitlement with respect to votes, to profits available for distribution and to assets available for distribution on a winding up, the lowest percentage figure shall be deemed to be the percentage of equity shares held; or
- (b) a company is an equity shareholder in a company not resident in Malta and the equity shareholder company is entitled at its option to call for and acquire the entire balance of the equity shares not held by that equity shareholder company to the extent permitted by the law of the country in which the equity shares are held; or
- (c) a company is an equity shareholder in a company not resident in Malta and the equity shareholder company is entitled to first refusal in the event of the proposed disposal, redemption or cancellation of all of the equity shares of that company not held by that equity shareholder company; or
- (d) a company is an equity shareholder in a company not resident in Malta and is entitled to either sit on the Board or appoint a person to sit on the Board of that company as a director; or
- (e) a company is an equity shareholder which invests a minimum sum of circa €1,165,000 (or the equivalent sum in a foreign currency) in a company not resident in Malta and that investment in the company not resident in Malta is held for an uninterrupted period of not less than 183 days; or
- (f) a company is an equity shareholder in a company not resident in Malta and where the holding of such shares is for the furtherance of its own business and the holding is not held as trading stock for the purpose of a trade:



Provided that a holding of a company in a body of persons constituted, incorporated or registered outside Malta, which is not resident in Malta, and is of a nature similar to a partnership en commandite the capital of which is not divided into shares constituted under the Companies Act, shall be deemed to constitute a participating holding if it satisfies the provisions of any of paragraphs (a) to (f) above which shall apply mutatis mutandis to such holding. For the purposes of this proviso the terms "equity shares" or "shares" shall be construed as referring to the capital in the said body of persons which entitles the holder to a right to votes, to profits available for distribution and to assets available for distribution on a winding up of the said body of persons, and the term "equity shareholder" shall be construed accordingly."



An anti-abuse provision has been introduced in respect of the participation exemption. Income derived from participating holdings acquired after 1 January 2007 will be subject to the exemption provided that the body of persons in which the participating holding is held satisfies any one of the following conditions:

- (i) it is resident or incorporated in a country or territory which forms part of the European Union;
- (ii) it is subject to any foreign tax of at least fifteen percent (15%);
- (iii) it does not have more than fifty per cent (50%) of its income derived from passive interest or royalties;



Where none of these conditions are satisfied then both of the following two conditions must be fulfilled:

(1) the equity holding by the company registered in Malta in the body of persons not resident in Malta is not a portfolio investment and for this purpose the holding of shares by a company registered in Malta in a company or partnership not resident in Malta which derives more than fifty per cent of its income from portfolio investments shall be deemed to be a portfolio investment; and

(2) the body of persons not resident in Malta or its passive interest or royalties have been subject to any foreign tax at a rate which is not less than five per cent (5%).

Tax payment and refunds

Companies may select to pay tax on income/gains from participating holdings rather than apply the participation exemption. However on distribution of dividends by the company to its shareholders, the latter may subsequently make a claim for a full refund of the tax paid by the company. This refund will be received by the fourteenth day following the end of the month in which the claim is made. In the case of dividends paid out of profits derived from a participating holding which does not satisfy the antiabuse provisions, the rate of refunds is five-sevenths of the advance company income tax.



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