

## KEY FACTS

# PARTICIPATION EXEMPTION

MALTA IS RENOWNED FOR HAVING ONE OF THE MOST EFFICIENT HOLDING STRUCTURES AND IS A JURISDICTION OF CHOICE FOR AN INCREASING NUMBER OF MULTINATIONAL GROUPS SEEKING SUCH A HOLDING STRUCTURE.

Malta's participation exemption rules allow for a 100% exemption from income tax on both dividends derived from a participating holding (subject to certain anti-abuse considerations) and on any gains arising from the transfer of such a participating holding.

### WHAT IS A PARTICIPATING HOLDING?

A participating holding arises when a Maltese registered company has an equity holding in another company and said Maltese registered company:

- > Holds directly at least 5% of the equity shares in another company, a body of persons, or a collective investment scheme, where such holding bestows the right to at least 5% of any two of the following:
  - > the right to vote;
  - > the right to profits available for distribution;
  - > the right to assets available for distribution on a winding up; or
- > Is an equity shareholder and has the option to call for and acquire the entire balance of the equity shares in another company not held by it to the extent permitted by the law of the country in which the equity shares are held; or
- > Is an equity shareholder and is entitled to first refusal in the event of the proposed disposal, redemption or cancellation of all of the equity shares of the other company not held by the equity shareholder; or
- > Is an equity shareholder in another company 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
- > Is an equity shareholder that holds an investment representing a total value, as on the date or dates on which it was acquired, of a minimum of Eur 1,164,000 (or the equivalent in foreign currency) in a company and that holding is held for an uninterrupted period of not less than 183 days; or
- > Is an equity shareholder in a company 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.

### WHAT IS AN EQUITY HOLDING?

The term "equity holding" means a holding of the share capital in a company that is not a property company, when the shareholding entitles the shareholder to at least any two of the following rights:

- > The right to vote;
- > The right to profits available for distribution to shareholders; and
- > The right to assets available for distribution on a winding up of that company,

and "equity shares", "equity shareholder" and "equity shareholding" shall be construed accordingly.

Although it is common for a participating holding to be held in a company, Malta's participation exemption also applies to holdings in other entities, such as partnerships, or European Economic Interest Groupings (EEIGs) irrespective of whether such entity/s elect to be treated as a company for tax purposes in Malta, and collective investment schemes that provide for limited liability of investors, provided that the above conditions for the application of Malta's participation exemption are satisfied.

## CAPITAL GAINS AND DIVIDENDS

Any capital gains derived from the transfer of securities in a participating holding (as defined above) should, regardless of whether the participating holding is a tax resident in Malta or not, be entitled to apply the participation exemption.

However, in the case of dividend income an additional requirement applies. The Maltese company that holds the participating holding should be in a position to avail itself of the participation exemption on any dividends received from that participating holding when it satisfies any one of the following three conditions:

- > The company in which it holds the participating holding is a resident or incorporated in a country or territory which forms part of the European Union; or
- > The company in which it holds the participating holding is subject to tax at a rate of at least 15%; or
- > The company in which it holds the participating holding has 50% or less of its income derived from passive interest or royalties which were not derived in the context of a trade or were subject to foreign tax, if any, directly, or by way of withholding, or otherwise, at a rate of tax which is less than 5%.

Where none of the above-listed three conditions are satisfied then both of the following conditions must be fulfilled:

- > The equity holding is not a portfolio investment (to this end, the holding of such equity shares in a company which derives more than fifty percent of its income from portfolio investments shall be deemed to be a portfolio investment); and
- > The company in which the equity shareholding is held, or its passive interest or royalties have been subject to any foreign tax at a rate of tax which is not less than 5%.

## DISTRIBUTION OF DIVIDENDS BY THE EQUITY SHAREHOLDER

Profits that are exempted in terms of the participation exemption are not subject to any further tax when distributed as a dividend by the equity shareholder. Despite this, given that the claiming of the participation exemption is optional and not obligatory, a recipient of a dividend paid out of profits which, notwithstanding the fact that they fell under the participation exemption rules were not so exempted at the level of the equity shareholder, would be entitled to avail themselves of the refundable tax credit system.

Dividends distributed out of taxed profits representing dividends and capital gains, which could have been exempted under the participation exemption rules at the level of the Maltese investor company, would entitle the recipient of the dividend to claim a full refund of the tax paid by it on the profits so distributed.

However, dividends distributed out of taxed profits derived by a Maltese investor company from a participating holding, which does NOT satisfy the additional requirement mentioned above, would be entitled to claim a refund of five-sevenths.

Any refund received in terms of the refundable tax credit system is not subject to any further tax in Malta.

## PARTICIPATION EXEMPTION ON BRANCH PROFITS

The participation exemption may also be applied to any gains or income derived by a company registered in Malta that are attributable to a permanent establishment, including a branch situated outside of Malta or to the transfer of such permanent establishment, whether such permanent establishment belongs exclusively or in part to the company registered in Malta.

## HOW WE CAN ASSIST

For more information, please contact Albert Cilia, Managing Director of our Malta office, at [acilia@tridenttrust.com](mailto:acilia@tridenttrust.com), or either of our Trustee and Corporate Services Directors, Josianne Cascun Montebello at [jcascunmontebello@tridenttrust.com](mailto:jcascunmontebello@tridenttrust.com) or Janice Copperstone at [jcopperstone@tridenttrust.com](mailto:jcopperstone@tridenttrust.com).

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