



Malta's Participation Exemption

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Malta is fast becoming the jurisdiction of choice for an increasing number of multinational groups seeking an efficient holding structure. Malta's participation exemption relieves 100% of the income tax both on the dividends derived from a participating holding and on gains derived from the transfer thereof. Recent amendments have extended the participation exemption provisions to apply to all forms of partnerships and have also lowered the threshold for a participating holding.

Malta's Participation Exemption

Malta's participation exemption applies to dividends and capital gains derived from a participating holding or from the transfer of part or all of such participating holding.

Participating Holding

A participating holding is found where a company resident in Malta holds equity shares in another entity and the former:

- a. Holds directly at least 5% of the equity shares in a company, body of persons or collective investment scheme, which holding confers an entitlement to at least 5% to any two of the following rights:
 - i. Right to vote;
 - ii. Right to profits available for distribution;
 - iii. Right to assets available for distribution on a winding up; or
- b. Is an equity shareholder and is entitled to purchase the balance of the equity shares or has the right of first refusal to purchase such shares or is entitled to sit as, or appoint, a director on the Board; or
- c. Is an equity shareholder which holds an investment of a minimum of €1.164 million (or the equivalent sum in another currency) and such investment is held for an uninterrupted period of at least 183 days; or
- d. Holds the shares or units for the furtherance of its own business and the holding is not held as trading stock for the purpose of a trade.



For a holding in a company to be a participating holding, such holding must be an equity holding, i.e. a holding in a company, not being a property company (a company having, directly or indirectly, any rights over immovable property situated in Malta – subject to some exclusions), that confers any two of the three rights in (a) above.

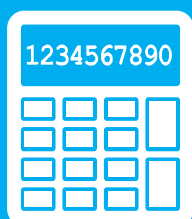
While it is most common for a participating holding to be held in a company, Malta's participation exemption is also extended to holdings in other entities, such as a partnership or European Economic Interest Grouping irrespective of whether such entity elects to be treated as a company for tax purposes in Malta, or a collective investment vehicle that provides for limited liability of investors, provided the above conditions for the application of Malta's participation exemption are satisfied.

Other Conditions for Application of Malta's Participation Exemption

With respect to **dividends**, Malta's participation exemption is applicable if the entity in which the participating holding is held:

- is resident or incorporated in a country or territory which forms part of the European Union; or
- is subject to tax at a rate of at least 15%; or
- has 50% or less of its income derived from passive interest or royalties; or
- is not a portfolio investment and it has been subject to tax at a rate of at least 5%.

The conditions for the application of Malta's participation exemption with respect to dividends do not apply in the case of **gains** derived from the transfer of a participating holding. Such gains are therefore exempt with no further prerequisites.



Alternatively: Tax Refunds

Where the participating holding relates to a non-resident company, an alternative to Malta's participation exemption is the full (100%) refund. The relative dividends and capital gains will be taxed in Malta (subject to double tax relief), however, upon a dividend distribution, the shareholders are entitled to a full refund (100%) of the tax paid by the distributing company.

Therefore, even where Malta's participation exemption is not availed of, the Malta tax may be eliminated through the application of the 100% refund.



Domestic Transfers

Malta's participation exemption also applies with respect to gains derived from the transfer of a participating holding in a company resident in Malta. Dividends from companies resident in Malta (whether participating holdings or otherwise) are not subject to any further taxation in Malta in view of the full imputation system.

Branch Profits

Although mainly a credit country, the principles of Malta's participation exemption have been used to extend the exemption method to:

- Income attributable to a permanent establishment ("PE") (including a branch) of a Maltese company where the PE is situated outside Malta, and
- Gains derived from the transfer of such PE.

The exemption applies irrespective of whether such PE belongs exclusively or partly to the Maltese company and also applies where the PE is operated through an entity or relationship, other than a company, in which the Maltese company has an interest.

The profits or gains to which the exemption applies are calculated on an arm's length basis, i.e. as if the permanent establishment is an independent enterprise operating in similar conditions.

Sale of shares in a Malta Company by Non-Residents

Any gains or profits derived by non-residents on a disposal of shares or securities in a company resident in Malta are exempt from tax in Malta, provided:

- The company does not have, directly or indirectly, any rights over immovable property situated in Malta, and
- The beneficial owner of the gain or profit is not resident in Malta and not owned and controlled by, directly or indirectly, nor acts on behalf of an individual/s ordinarily resident and domiciled in Malta.

No Withholding taxes

Malta does not levy any withholding taxes on outbound dividends, interest, royalties and liquidation proceeds.

Other tax advantages

Maltese holding companies benefit from the application of all EU directives as well as Malta's extensive network of double taxation agreements, largely based on the OECD Model Tax Convention.



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