

# Malta's Participation Exemption



Malta is fast becoming the jurisdiction of choice for an increasing number of multinational groups seeking an efficient holding structure. Malta's 100% participation exemption relieves income tax both on the dividends derived from a participating holding and on gains derived from the transfer thereof.

Recent amendments have significantly extended the participation exemption provisions which now exempt branch profits and income derived from collective investment schemes.

## Participation Exemption

In terms of the Income Tax Act, a 100% 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 10% of the equity shares in a company, body of persons or collective investment scheme, which holding confers an entitlement to at least 10% 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 Maltese limited partnership (the capital of which is not divided into shares), a non-resident body of persons (with similar characteristics to the Maltese limited partnership) or a collective investment vehicle that provides for limited liability of investors, provided the above conditions for the application of the participation exemption are satisfied.

## Other Conditions for Application of the Exemption

With respect to **dividends**, the 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 the 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 the 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 the participation exemption is not availed of, the Malta tax may be eliminated through the application of the 100% refund.

## Domestic Participation Exemption

The 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 Participation Exemption

Although Malta is mainly a credit country, the principles of the 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 permanent establishment.

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.



**“No withholding taxes on payments to non-residents no matter where they are resident and no exit taxes”**

## Other tax advantages

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

Furthermore, Malta has no net worth/wealth tax or similar taxes on capital, no controlled foreign company (CFC) rules, no thin capitalisation rules and no transfer pricing rules.

## **"Tax exemption on income attributable to foreign branches of Malta companies"**

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