

The Maltese International Holding Company

Act II of 2007 enacted on 16th March 2007 has introduced new and better amendments to the Maltese International Holding Company regime.

At a glance, the new measures are the following:

- The introduction of a Participation Exemption on dividends received from a participating holding or from gains on the disposal of such holding.
- A more beneficial definition of a participating holding, to include investments held as trading stock.
- New Anti-Avoidance provision specifically targeting participating dividends received from low tax jurisdictions
- Lower effective tax rates for non-participating holding income received by the Maltese Holding Company

The New Participation Exemption Regime

Companies registered or continued in Malta after 1st January 2007 can benefit from these new provisions relating to the Participation Exemption. Such exemption means that the foreign dividends received by the Maltese company by a qualifying holding or gains from the disposal of such holding would be exempt from tax and withholding tax in Malta.

In order for a company to be able to enjoy the participation exemption, any one of the following is to be satisfied:

- (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;
- (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;
- (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;
- (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;
- (e) a company is an equity shareholder which invests a minimum sum of five hundred thousand liri (or the equivalent sum in a foreign currency) in a company not resident in Malta and that the investment in the company not resident in Malta is held for an uninterrupted period of not less than 183 days;

(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 trade.

The New Anti-Avoidance Provisions

For a participating holding to be claimed, any foreign entity in which the participating is held must satisfy at least one of the following criteria:

1. It is a resident or incorporated in a country or territory which forms part of the European Union;
2. It is subject to any foreign tax of at least fifteen per cent (15%)
3. It does not have more than fifty per cent (50%) of its income derived from passive interest or royalties. Passive interest or royalties are defined as that interest or royalty that is derived from a trade or business and where such royalties have not, directly or indirectly suffered or not suffered any foreign tax which is less than five per cent (5%).

Where none of the above conditions are satisfied, then both of the following conditions must be satisfied:

1. The equity holding by the Maltese company in the foreign entity is not a portfolio investment (not held for the purpose of risk spreading and the investment is not strategic in that it does not have the intention to influence the management of the company but is held for speculation)
2. The foreign entity 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%)

Non-Participating Holding Income

When none of the conditions above are satisfied for the foreign income to be deemed as participating holding, the Flat Rate Foreign Tax Credit provision may be exercised and the foreign income is taxed at 18.75%. A tax refund of 6/7ths of this tax paid may be claimed by the shareholders of the Maltese company to leave an effective tax rate of 2.67%. If the non-participating income consists of passive interest or royalties, the tax refund available is of 5/7ths of the tax paid, and the effective tax in this case is of 5.36%. No withholding taxes are payable in any case upon the distribution of the dividends from the Maltese Holding Company.

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