
EMANUEL ELLUL LIMITED

TAX & MANAGEMENT CONSULTANTS

Malta's participation exemption

Participation Exemption & Malta Holding Companies

A Malta Holding Company is a company incorporated in Malta, the object of which is that of holding shares in other subsidiary companies. A holding Company can also hold any other assets including movable and immovable property, cash and intellectual property both in and outside Malta.

Malta companies benefit from a participating exemption based on the participating holding rules both on dividends from such holdings and gains arising on the disposal of such holdings. Recent amendments have extended Malta's participation exemption also to domestic holdings of shares and capital gains arising from the transfer of a participating holding in a Malta company are also eligible for the participation exemption.

Malta Participating Holdings

Malta holding companies can be structured to hold shares in other companies. Such participations in other companies held by Malta holding companies qualify as participating holdings if they meet either of the following conditions:

- i. Holds directly at least 10% of the equity shares of a company whose capital is wholly or partially divided into shares and such holding gives right to at least 10% of 2 of the following:
 - a. Rights to vote
 - b. Right to profits upon distribution
 - c. Rights to assets available for distribution on winding up
- ii. Is an equity holding and the equity shareholder has the right to buy the remaining share capital of the company.
- iii. Is an equity shareholding, giving the equity shareholder the right of first refusal in the event of disposal, cancellation or redemption of the remaining shares of the company.
- iv. The holding is an equity shareholding and the equity shareholder is entitled to either sit on the board of the company or appoint a director on the board of the company.
- v. Is an equity shareholder with an investment value of at least €1,164,000 for a period of not less than 183 days.
- vi. Is an equity shareholding and the holding of such shares is for the furtherance of the business of the holding company but not held for trading purposes.

In order for a holding company to be a participating holding, the holding must be an equity holding, (not being a property company – directly or indirectly, any rights over immovable property situated in Malta, that qualifies for any two of the three rights in (i) above.

Participation Exemption Rules – Other conditions (Dividends)

Any dividends received by a Malta holding company from a participating holding are exempt from Malta tax if they satisfy one of the following:

- i. The holding is in a body of persons resident or incorporated in a country within the EU
- ii. The dividend has been subject to at least 15% foreign tax
- iii. The holding is not in a body of persons which derives more than 50% of its income from passive interest or royalties
- iv. The holding in a body or persons not resident in Malta is not a portfolio investment and the body of persons not resident in Malta has been subject to tax of at least 5%
- v. The profit or gain from the disposal of a participating holding in company resident or not resident in Malta is also exempt from Malta Tax.
- vi. 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 body of persons not resident in Malta which derives more than 50% of its income from portfolio investments shall be deemed to be a portfolio investment; and
- vii. The body of persons not resident in Malta or its passive interest or royalties has been subject to any foreign tax at a rate of not less than 5%.

Sale of shares in Malta Company by Non-Residents

Any gains or profits derived by non-residents on the disposal of any shares or securities in a Malta registered company, shall be exempt provided that the following two conditions are met:

- The company does not own (directly or indirectly), any rights over immovable property situated in Malta;
- The beneficial owner of the gain or profit is not a resident in Malta and not owned and controlled (both directly and indirectly), nor acts on behalf of an individual or individuals who are ordinarily resident and domiciled in Malta

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