

# Trading Companies

IN MALTA



## Recent amendments to the Income Tax Act - approved by EC Commission

### Malta - an ideal base for carrying out Trading Operations

The recent changes to Maltese tax laws continue to place Malta as an ideal location for the purpose of carrying out international trading operations. Through the establishment of a company registered under Maltese law, international entrepreneurs are able reap the advantages of the imputation system of taxation when distributions are made to them as non resident shareholders.

The definition of a 'company registered in Malta' has been widened to include oversea branches set up in Malta, companies which although not resident in Malta carry out activities in Malta and also companies which are neither incorporated nor resident in Malta provided that such companies are registered with the local tax authorities. The objects of the company must include operations of a trading nature.

The tax paid by companies registered in Malta is at the rate of 35%. However, since Malta operates the full imputation system of taxation, the tax paid by the company is allowed as a credit to the shareholders when distributions are made to them. Shareholding may be held by individuals or through a Maltese parent constituted as a dividend feeder' company. On the distribution of a dividend from the company, the shareholders may claim a tax refund of six sevenths of the tax paid by the company. The tax refund is paid to the shareholder within fourteen days from the end of the month in which it is due.

Evidently, a company registered in Malta is a very tax efficient vehicle ideally suited for carrying out international trading activities. The following example illustrates the current tax regime:



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Trading profit by company	1000
Malta Tax at 35%	350
Profit after tax	650
Dividend received by Shareholder	1,000
Tax thereon	350
Credit for tax paid by company	350
Tax payable	0
Tax refunded – 6/7 <sup>th</sup>	300
Net tax paid in Malta	50

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; or

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

## Malta introduces the participation exemption

Under the Maltese tax system, the income and capital gains derived by a Maltese registered company from a 'participating holding', qualifies for a full refund of the Maltese tax paid by the company when distributions are made to company shareholders. The latest amendments to Maltese tax laws have enhanced this tax treatment through the introduction of the notion of the 'participation exemption' whereby such income may be exempted from Maltese tax provided certain conditions are satisfied.

A participating holding arises where:

- 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; or
- 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; or
- A company is an equity shareholder in a company not resident in Malta and the equity shareholder company is entitled

Dividends derived from a participating holding acquired after 1 January 2007 by a Maltese company may qualify as a 'participation exemption' provided certain anti-abuse provisions are satisfied. The body of person in which the participating holding is held must satisfy any one of the following conditions:

- It is resident or incorporated in a country or territory which forms part of the EU;
- It is subject to any foreign tax of at least 15%;
- It does not have more than 50% of its income derived from passive interest or royalties.

When none of the above conditions are met, then both the following two conditions must be fulfilled:

- The equity holding by the company registered in Malta in the body of persons not resident in Malta is not a portfolio investment; and
- The body of persons not resident in Malta or its passive interest or royalties have been subject to any foreign tax at rate which is not less than 5%.

In those instances where the participating holding qualifies as a 'participation exemption', the Maltese company has the option not to declare the income in its tax return resulting in no tax being payable in Malta.

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If the company, however, elects to include the income from its participating holding in its tax return, it will then still qualify for a full refund of the tax paid by the Maltese company. The refund is payable by the fourteenth day following the end of the month in which the claim is made.

For companies having income derived from non participating holdings or from passive interest and royalties, the Maltese tax system still provides for refunds of the tax paid by the Maltese company when distributions are made to shareholders.

Shareholders receiving a dividend from profits allocated to the Maltese taxed account or the foreign income account, not consisting of passive interest or royalties, may apply for a refund of six-sevenths of the tax paid by the company when distributions are made to them.

When distributions are made out of profits earned from passive interest and royalties, the shareholders of a Maltese company may claim a refund of five-sevenths of the tax paid by the company when distributions are made to them.

The six-sevenths and five-sevenths refunds only apply when the distributions are made by the company which did not claim any form of double tax relief. When dividends are paid out of profits allocated to the foreign income account and in respect of which profits the company has claimed double tax relief, the shareholders may apply for a refund of two-thirds of the tax paid by the Maltese company.