Information Sheet No. 27

Malta Companies in International Tax Structuring

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Malta is a reputable EU business and financial centre with an attractive tax regime and sound legislative framework. Maltese companies are often used in international structures and transactions. This publication provides an outline of the main features and elements of the Maltese tax system and the main uses of the Malta company in international tax structuring.

Contents

1. Main features of the Maltese Tax System

- Basis of taxation: Combination of Management and Control and Domicile.

  A company **incorporated in Malta** is considered as domiciled and resident in Malta and is taxable on a worldwide basis.

  A **non-Maltese incorporated company** that is resident in Malta through management and control is subject to Maltese tax on income arising in Malta and on income received in/remitted to Malta.
- Companies are subject to tax at a flat rate of 35%. However, the effective tax rate is lower because of tax refunds to shareholders (see imputation system) and favourable tax provisions as certain incomes are tax exempt, e.g. full tax exemption on dividends and gains from disposal of qualifying participations, profit from foreign permanent establishment (subject to conditions) and 100% tax exemption on qualifying IP related profit.

- No withholding taxes on outbound payments to non-residents
- No thin capitalisation rules
- No CFC provisions
- Full adoption of EU Directives
- No specific Transfer Pricing Rules
- Compliant with EU and OECD practices
- Good double tax treaty network
- Group loss relief provisions
- Unilateral double tax relief
- No branch remittance tax
- No capital duty
- No exit charges

2. Malta's Imputation System

Malta operates a full imputation system of taxation, whereby the shareholder in receipt of a dividend distributed by a Malta company is entitled to claim a refund of the Malta tax on those profits. The rate of the tax refund depends on the nature of the underlying profits out of which the dividend has been paid, and whether any double tax relief has been claimed by the underlying Malta company. In general, if the profits emanate from active/trading operations the rate of refund is $6/7^{ths}$, in the case of passive incomes $5/7^{ths}$ and $2/3^{rds}$ if foreign tax relief has been claimed. Such refund is payable within 14 days from receipt by the International Tax Unit of a complete shareholders' application for refund.

Dividend Feeder Structure

Certain countries treat the tax refund paid by the Maltese tax authorities as taxable income. This limitation can be addressed by interposing a Malta holding company on top of a Malta operating company. The parent company can accumulate tax free the underlying dividends and tax refund and then paying the whole amount to the foreign shareholder in the form of dividends without any Malta withholding tax, or re-invest them as the case may be.

3. Maltese Resident Non-Domiciled Companies

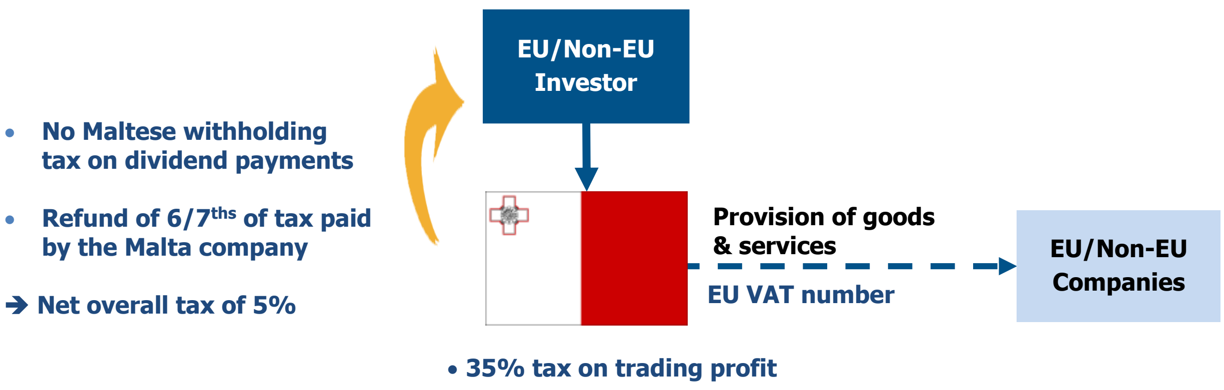
A non-Maltese incorporated company that is resident in Malta through management and control is subject to Maltese tax on income arising in Malta and on income received in/remitted to Malta.

Tax planning opportunity with Cyprus: Cyprus registered companies engaged in international activities outside Cyprus can have their management and control in Malta. Such companies are taxed only in Malta and not in Cyprus, only on any income actually remitted in Malta. The efficiency on this structure needs careful structuring as certain very important considerations (e.g. double tax treaties or source of income) need to be taken into account.

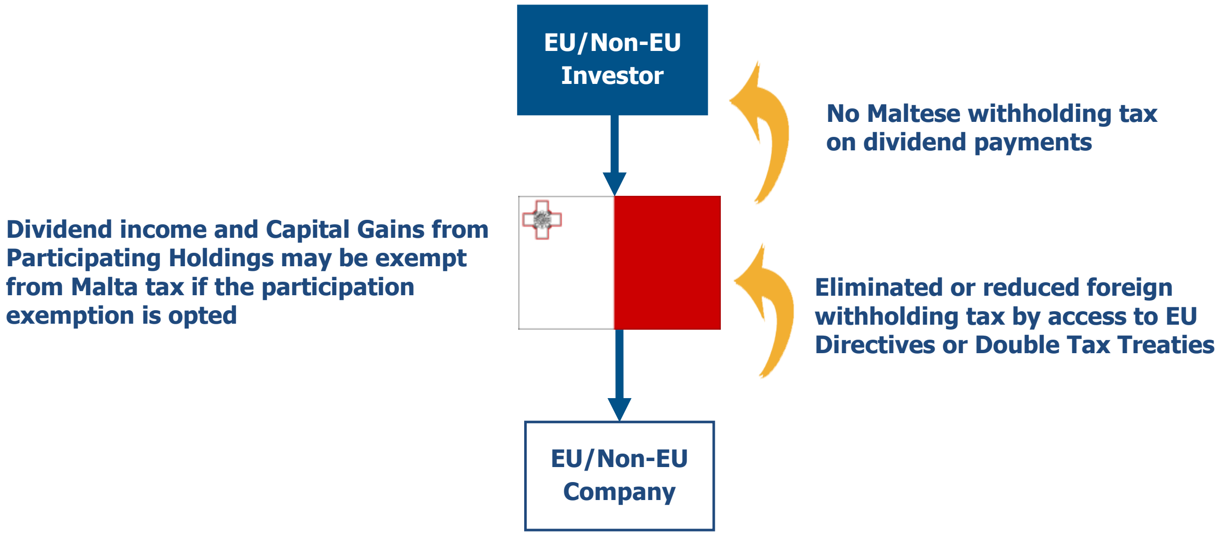
4. Main uses of Maltese Companies

The following sections describe the main tax elements applicable in specific Maltese vehicles which are commonly used in international structuring.

A. The Malta Trading Company



B. The Malta Holding Company



Participating holding:
For capital gains, a participating holding is where the Maltese company mainly:
- holds at least 10% in the underlying company, **or**
- invested a minimum of €1.164.000 for an interrupted period of 183 days.

With respect to the tax exemption of **dividends**, the underlying company should also fulfill <u>one</u> of the following:

- is resident or incorporated in a country which is part of the EU, **or**
- is subject to tax at a rate of at least 15%, **or**
- more than 50% of its income is derived from active operations (not passive interest or royalties), **or**
- is not held as a portfolio investment and is subject to tax of at least 5%.

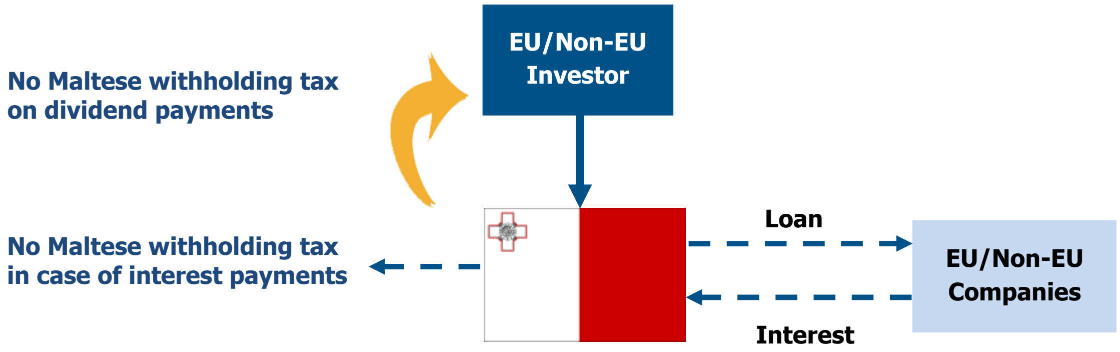
Non-qualifying participating holdings:
Gains and dividends from non-qualifying holdings are taxed in Malta at the rate of 35%. The shareholder may claim a refund of the tax paid by the Holding company upon dividend distribution, resulting to a Maltese tax ranging from of 0% to 10%.

Malta Double Tax Treaty Network

Albania	*Estonia*	*Italy*	*Montenegro*	*Slovakia*
Australia	*Finland*	*Jersey*	*Morocco*	*Slovenia*
Austria	*France*	*Jordan*	*Netherlands*	*South Africa*
Bahrain	*Georgia*	*Korea (ROK)*	*Norway*	*Spain*
Barbados	*Germany*	*Kuwait*	*Pakistan*	*Sweden*
Belgium	*Greece*	*Latvia*	*Poland*	*Switzerland*
Bulgaria	*Guernsey*	*Lebanon*	*Portugal*	*Syria*
Canada	*Hong Kong*	*Libya*	*Qatar*	*Tunisia*
China	*Hungary*	*Liechtenstein**	*Romania*	*Turkey*
Croatia	*Iceland*	*Lithuania*	*Russia**	*Ukraine***
Cyprus	*India*	*Luxembourg*	*San Marino*	*United Arab Emirates*
Czech Republic	*Ireland*	*Malaysia*	*Saudi Arabia*	*United Kingdom*
Denmark	*Isle of Man*	*Mexico **	*Serbia*	*United States*
Egypt	*Israel*	*Moldova***	*Singapore*	*Uruguay*

**Treaty will apply as from 1 January 2015 | **Treaty not yet in force*

C. The Malta Financing Company



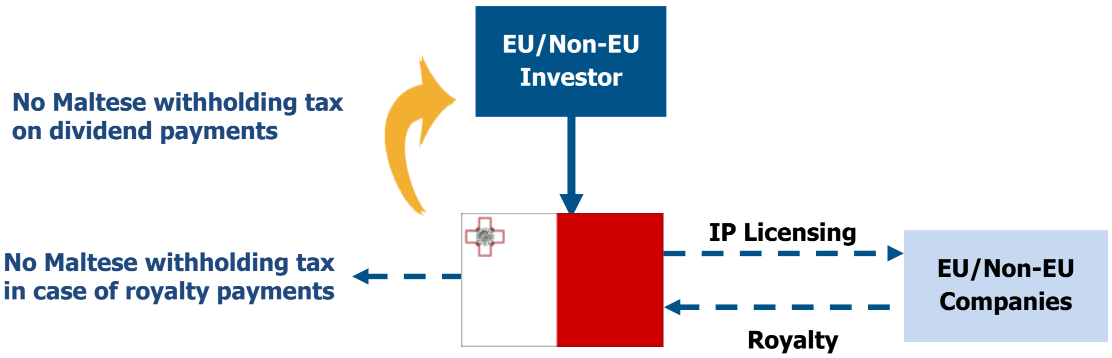
- **Finance profit subject to 35% corporate income tax**
- **In case of back-to-back loans thin spreads are accepted**

Reduced or eliminated foreign withholding taxes on payments of interest to Malta through access to EU Interest and Royalty Directive or Double Tax Treaties

Refunds to shareholder
Depending on the nature of the interest earned, the shareholder would be entitled to a refund of the tax paid by the Financing company of either 6/7$^{\text{ths}}$ (on active interest), 5/7$^{\text{ths}}$ (on passive interest) or 2/3$^{\text{rds}}$ if relief has been claimed on foreign taxes.

Licensing requirements: Financing to third parties is a regulated activity and a license is required from the Malta Financial Services Authority (MFSA).

D. The Malta IP Company



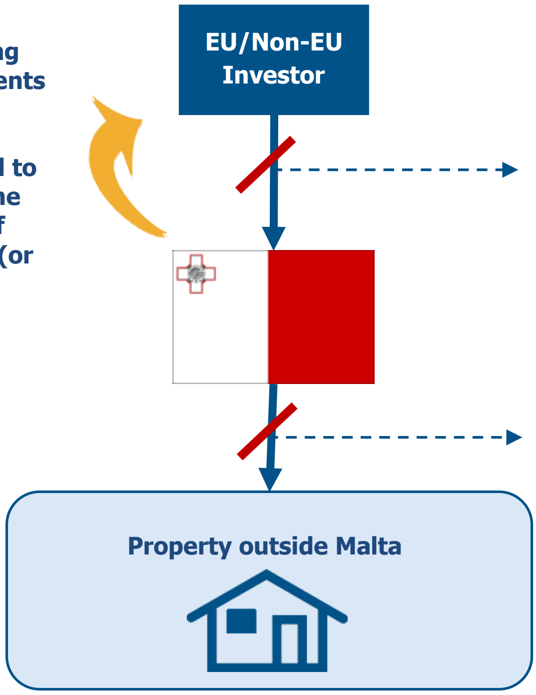
Income derived from IP related activities, may be exempt from tax if emanating from qualifying IP which includes patents, copyrights and trademarks. In order for the scheme to apply, approval is required from *Malta Enterprise* (a governmental body).

Income from non-qualifying IP will be subject to 35% corporate income tax, with the shareholder being able to claim a refund of the said tax, resulting to an effective tax ranging from 0% to 10% depending on the circumstances and whether any foreign taxes have been claimed.

Reduced or eliminated foreign withholding taxes on payments of royalties to Malta through access to EU Interest and Royalty Directive or Double Tax Treaties

E. The Malta Real Estate Company

- **No Maltese withholding tax on dividend payments**
- **The non-resident shareholder is entitled to a refund of 6/7ths of the tax paid at the level of the Maltese company (or 2/3rds if foreign taxes have been claimed)**



Sale of company shares from a non-Maltese resident does not create any Maltese tax adverse implications

Gains generated from the disposal of non-Maltese property are subject to corporate income tax at the rate of 35%. Similar treatment applies to rental income generated from the underlying property

Note: Local tax and other issues where the property is situated need to be considered

NOTES:

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. P.G. Economides & Co Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.

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