

## **Holding Company Structures**

Maltese law does not host a specific *ad hoc* framework regulating holding companies. Nevertheless, tax efficient international holding structures may be created through the interactive application of various tax legislation provisions.

The objects of a company created to act as an international holding structure will need to specify that the company will hold assets, shares or other investments in other companies or institutions.

The major advantages of using a Malta Company holding structure are:

- (i) wide double taxation treaty network;
- (ii) extensive provisions for double taxation relief other than double taxation treaty relief;
- (iii) no minimum period required for the holding of the investment in the foreign holding;
- (iv) no requirement that the foreign participation must be an active operating company;  
and
- (v) no requirement that the foreign participation be subject to taxation overseas.

An holding company is taxed at the normal corporate tax rate, currently set at 35%. Nevertheless, fiscal benefits may arise at both shareholder and company level.

### **At company level**

#### *Relief from Double Taxation*

At company level, a holding company investing in securities and other investment instruments overseas, may invoke the mechanisms for double taxation relief available under Maltese law namely:

- (a) The wide network of double taxation agreements;
- (b) Unilateral relief and
- (c) The Flat Rate Foreign Tax Credit.

#### **(a) Double Taxation Agreements**

Malta has entered into Double Taxation Agreements with a large number of countries including most of the major European states. Further agreements have been initialled or negotiated and are awaiting ratification. These agreements are mainly based on the Organisation for Economic Cooperation and Development (OECD) model.

**(b) Unilateral Relief**

Relief from double taxation is also possible on a *unilateral* basis where tax is suffered overseas on income received from a country which does not have a treaty with Malta, irrespectively of whether that income is remitted to Malta. The overseas tax suffered, limited to the Malta tax charge on the income, is allowed as a credit against tax chargeable in Malta.

**(c) Flat Rate Foreign Tax Credit**

Another mechanism is the *Flat Rate Foreign Tax Credit*, which is available to a Malta company that generates income or capital gains overseas. It is generally utilised where the company is not in a position to provide evidence of the overseas tax paid to the satisfaction of the Commissioner of Inland Revenue.

The Flat Rate Foreign Tax Credit is calculated at 25% of the overseas income or gain received in Malta. The income plus the deemed tax is subject to Malta corporate tax with relief given for the deemed credit. This is illustrated in Table 1 at the end of this Fact Sheet.

A company which does not have a participating holding may reduce the effective tax rate in Malta to 6.25% or lower, and a company which has a participating holding may reduce the cash flow implications of the tax payment (from 35% to 18.75%) by the application of the Flat Rate Foreign Tax Credit (FRFTC). This credit is available to a Maltese company, which is in receipt of income that stands to be allocated to the foreign income account. A certificate from an auditor confirming that the income in question stands to be allocated to the Foreign Income Account is sufficient to enable the company to claim the FRFTC.

The FRFTC is calculated at 25% of the amount of the overseas income received by the company. The income plus the credit less deductible expenses are subject to tax at 35% with relief for the deemed credit.

**Refunds of tax to shareholders**

At shareholder level, shareholders may avail themselves of a refund system in relation to tax paid on dividends received from a holding company.

Any dividends distributed out of the profits of a holding company and which represent income from overseas holdings, participations or business activities that are paid out to shareholders would enable the said shareholders to claim a **refund** of two-thirds (2/3) of the Malta tax paid by the company in respect of the said profits.

Moreover, where the profits so distributed are derived from a '*participating holding*' or from the disposal of such holding, a claim may be made for a full (100%) refund of all the Malta tax paid in respect of those profits.

In terms of Malta tax laws, a '*participating holding*' is deemed to exist where:

- a) a Maltese company holds directly at least 10% (including right to at least 10% of the voting rights, the dividend rights and the rights to assets on a winding up) of the equity shares of a non-Maltese entity
- b) where a Maltese company is an equity shareholder in a non-Maltese entity and is entitled to either sit on the Board or appoint a person to sit on the Board of the non-Maltese entity
- c) where a Maltese company is an equity shareholder investing at least Lm500,000 (approx Eur. 1,165,000) for at least 183 days in a non-Maltese entity
- d) where a Maltese company is an equity shareholder in non-Maltese entity and is entitled to, at its option, call for and acquire the entire balance of the equity shares not held by it
- e) where a Maltese company is an equity shareholder in non-Maltese entity and is entitled to first refusal in the event of a proposed disposal, redemption or cancellation of all the equity shares in the non-Maltese entity not held by the Maltese company
- f) where a Maltese company is an equity shareholder in a non-Maltese entity where the holding of such shares is for the furtherance of the business of the Maltese company and is not held as trading stock for the purpose of a trade.

Tax is paid in the same currency as the company's share capital, which is also the currency in which the company draws up its annual financial statements. The Tax refund is also paid in the same currency, thus there exists no exchange risk for the company.

In terms of the provision of tax legislation, the Inland Revenue in Malta must pay a tax refund within 14 days from the end of the month in which it falls due. A tax refund is considered to fall due when the audited financial statements and a complete and correct income tax return of the Malta Company are submitted to the tax authorities, the tax due is paid in full and an appropriate application for the refunds is submitted by the shareholder or his representative.

The operations of the full imputation system adopted in Malta, as well as the refund mechanism, are illustrated in the following examples. Examples are given for a company with a participating holding, with and without the operation of the FRFTC and for a company with a non-participating holding which claims FRFTC.

<b>TABLE 1: Worked Example</b>	<b>Company has a participating holding (PH)</b>	<b>Company has PH and claims FRFTC</b>	<b>Company claims FRFTC (no PH)</b>
<b>Company level</b>	€	€	€
Profit before tax	1,000.00	1,000.00	1,000.00
Gross up for the flat rate foreign tax credit	-	250.00	250.00
	<hr/>	<hr/>	<hr/>
	1,000.00	1,250.00	1,250.00
	<hr/>	<hr/>	<hr/>
Tax thereon at 35%	350.00	437.50	437.50
Credit for the flat rate foreign tax credit	-	(250.00)	(250.00)
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Tax payable	350.00	187.50	187.50
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<b>Shareholder level</b>			
Gross dividend received by shareholder	1,000.00	1,000.00	1,000.00
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Tax charged thereon at 35%	350.00	350.00	350.00
Credit for tax at source paid by company	(350.00)	(350.00)	(350.00)
	<hr/>	<hr/>	<hr/>
Refund of company tax (full or two-thirds)	-	-	-
	(350.00)	(187.50)	(125.00)
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Total refund to shareholders	(350.00)	(187.50)	(125.00)
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