



## HOLDING COMPANIES

### Formation Requirements and Taxation Treatment

*The advantages of setting-up a holding company in Malta are gradually being realised by both resident and non-resident shareholders. A holding company is, as its name suggests, a company which owns a shareholding in another company or companies, either local or foreign, and distributes the income from such shareholding to its shareholders in Malta or abroad. As explained in greater detail below, Malta's system of tax refunds and framework of double taxation treaties result in a tax efficient jurisdiction for holding companies, particularly those holding a participating holding in non-resident companies.*

*This publication provides a general overview of the requirements for the registration of a holding company in Malta and the taxation regime applicable to such companies.*

#### FORMATION REQUIREMENTS

##### The Memorandum and Articles of Association

Like all other companies registered in Malta, a holding company has to have a memorandum and articles of association<sup>i</sup> which must be registered with the Registrar of Companies (hereinafter, the "Registrar") at the Malta Financial Services Authority (hereinafter, the "MFSA").

##### Shareholders

A holding company must have at least two shareholders, unless the company qualifies for private exempt status, in which case it may be set-up as a single member company. The shareholders of the company may be either natural persons or bodies corporate. It is also possible for shares to be held by a nominee or trustee on behalf of the shareholder.

##### Share Capital

A holding company must have an authorized share capital of not less than EUR 1,164.69 (or equivalent in foreign currency). At least 20% of each share must be paid upon incorporation. As a general rule, the currency of the share capital must be the company's reporting currency for accounting and tax purposes. Subject to specific formalities, it is possible for the share capital to be issued for a non-cash consideration, provided that the consideration

is capable of economic assessment and does not consist of the provision of services.

##### The Registered Office

The registered office of the holding company must be in Malta.

##### The Objects of the Company

The memorandum of every company must contain an objects clause outlining the specific objects of the company. The objects clause of a holding company differs to that of other companies, since a holding company will be holding shares in other local and/or foreign companies. It is also possible for the holding company to hold other assets, such as real estate, securities, intellectual property such as trademarks and patents as well as other intangible rights, irrespective of where such assets are located.

##### Directors

The holding company must have at least one director who may be either a natural person or a body corporate. As a rule, a sole director cannot occupy the post of company secretary, unless the company has private exempt status, in which case the sole director can also act as company secretary.

##### Company Secretary

Every company must have a company secretary, who must be a natural person.



## Meetings

Every year a company must hold an annual general meeting. This annual general meeting need not be held on the anniversary of the previous annual general meeting, provided that no more than fifteen months elapse between one general meeting and another.

## Documentation

The following documentation must also be supplied upon registration:

- certified copies of relevant identification documents of shareholders and directors;
- a deposit slip from a local or foreign bank following the opening of a corporate account for such amount corresponding to the paid up share capital; and
- a document granting the powers of attorney in favour of any person signing the memorandum and articles of association on behalf of shareholders.

The MFSA reserves the right to request the provision of any additional information.

## Fees

### Registration fee

Upon registration with the Registrar, the holding company must pay the applicable registration fee which is calculated according to the value of its authorised share capital. If registration is affected in electronic format the registration fee ranges between 210 to 1,900 Euros, and 245 to 2,250 Euros if registered in paper format.

### Registration of Annual Return

Upon the registration of the annual return, the holding company must pay the applicable registration fee which again varies depending upon the authorised share capital of the company and whether registration is affected through electronic or paper format.

## Licensing Requirements

It is possible that the holding company wishes to carry out an activity which is considered as a "licensable activity" in Malta and would consequently necessitate application for the appropriate license or authorisation from the competent authority. If this is not the holding company's intention, it is essential that this is made clear in its memorandum and articles of association.

## TAXATION

All companies registered in Malta are subject to corporate tax at a rate of 35% on their chargeable income. However, Malta adopts a full imputation system of taxation, through which tax paid by a company in Malta is imputed to its shareholders as a tax credit upon the distribution of dividends. Thus, upon the distribution of dividends, the shareholders become eligible for a refund from the Commissioner of Inland Revenue, in whole or in part (depending upon the circumstances as indicated below), of the tax paid by the company in Malta. Further tax relief may also apply via the application of the double taxation treaties which Malta has signed with over 50 countries, as well as the flat rate foreign tax credit for any tax that has been paid outside Malta.

### The "Participating Holding" Exemption

Any income or gains derived by a holding company from a participating holding or from the disposal of such holding are exempt from income tax in Malta.

A "participating holding" exists when a Maltese company directly holds at least 10% of the equity shares in a non-resident company. If the Maltese company holds less than 10% of such shares it may still qualify as a participating holding if the Maltese company satisfies any one of the following conditions:

1. it has the option to call for and purchase, or enjoys the right of first refusal upon the disposal of, the remaining equity shares in the non-resident company;
2. it is entitled to either sit or appoint a person to sit on the board of directors of the non-resident company;
3. it invests at least EUR 1,164,000 (or equivalent in foreign currency) in the non-resident company and that investment is held for an uninterrupted period of 183 days; or
4. it holds (not as trading stock) the shares in the non-resident company in furtherance of its own business.

The holding in the non-resident company must also satisfy any one of the following conditions (in addition to falling within the definition of a participating holding) in order for the participating holding exemption to apply. Either the non-resident company:



1. is incorporated in an EU Member State;
2. is subject to foreign tax at not less than 15%;
3. does not have more than 50% of its income derived from passive interest or royalties<sup>ii</sup>; or
4. (i) the holding of shares in the non-resident company is not a portfolio investment<sup>iii</sup> and such non-resident company does not derive more than 50% of its income from portfolio investments, and (ii) the non-resident company or its passive interest or royalties is already subject to foreign tax at a rate of not less than 5%.

If none of the four above conditions are satisfied, the shareholders may, upon distribution of dividends, claim a five-sevenths refund of the advance tax paid by the company.

### The 6/7<sup>th</sup>s Refund

Shareholders receiving dividends paid by a Maltese company are eligible for a six-sevenths refund of the advance tax paid by the company, provided the company has not already claimed double taxation relief, in which case the shareholders are no longer eligible to claim such refund. The six-sevenths refund results in an effective rate of Malta tax of 5%.

### The 5/7<sup>th</sup>s Refund for Passive Interest on Royalties

Shareholders receiving dividends which are paid out of profits derived from passive interest or royalties are eligible to a five-sevenths refund of the advance tax paid by the company. Again, eligibility for a refund is lost if the company has already claimed double taxation relief.

### Refund Procedure

The above refunds can be claimed after the shareholder has been duly registered with the Commissioner of Inland Revenue in Malta and supplying the dividend certificate issued by the company upon distribution. Registration is affected by the company on behalf of, and after being advised to do so by, the claimant shareholder.

In those cases where the participating holding exemption applies, the holding company may choose not to declare the income derived from its participating holding in the non-resident company resulting in no tax being paid in Malta. Alternatively, the holding company

may opt to declare the income derived from its participating holding in its tax return, in which case the shareholders may then proceed to claim a full tax refund of the Malta tax paid by the holding company from the Commissioner of Inland Revenue.

Refunds are paid to registered shareholders by no later than the 14<sup>th</sup> day following the end of the month in which the refund falls due.

### Disclaimer

The information contained herein is for informational purposes only and is not meant to serve and should not be relied upon as professional advice. Further information on the subject matter of this publication may be obtained from lecocqassociate.

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- <sup>i</sup> If no articles of association are registered, the model articles contained in the Maltese Companies Act will govern the internal workings of the company.
- <sup>ii</sup> "Passive interest or royalties" includes interest or royalty income which is not derived from a trade or business and such interest or royalties have not suffered any foreign tax or have suffered foreign tax at a rate of less than 5%.
- <sup>iii</sup> The Income Tax Act defines a "portfolio investment" as an investment in securities such as shares, bonds, and such like instruments, which:
- (i) is held as one of many such investments for the purpose of investment by risk spreading;
  - (ii) such an investment is not a strategic investment and is made with no interest in and without the intention of influencing the management of the company invested in; and
  - (iii) is made only to follow the share price and dividend policy of the company invested in to maximise investment returns and to sell the investment as soon as it appears that the shares may lose value.