

WHPARTNERS

PARTICIPATING HOLDING REGIME

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BACKGROUND

The current holding regime in Malta was introduced in the mid-90's as a corporate tax regime that contemplates the right of shareholders to request a tax refund equivalent to 100% of the Malta tax paid by a resident company on the profits derived from a 'participating holding' (as defined) and distributed by way of dividend to its shareholders.

In 2007, the law was amended to include a wider definition of 'participating holding' as well as to introduce the concept of Participation Exemption, thus permitting the Maltese resident company to opt not to pay Malta tax on profits/gains derived from a 'participating holding' (subject to certain anti-abuse provisions). In 2018, the law was amended again to change the definition of 'participating holding'.

THE PARTICIPATING HOLDING

The Participating Holding regime is available to a company in relation to equity holdings – which need not be held by a company by way of investment in

non-resident entities with respect to:

- partnerships or European Economic Interest Grouping (EEIG), not being a property partnership and which has not elected to be treated as a company;
- an interest in a non-resident body of persons not being a property partnership, and which has not elected to be treated as a company;
- a collective investment vehicle constituted, incorporated or registered outside Malta and which is not resident in Malta, where the liability of the investors in such a scheme is limited to the amount invested by them.

The equity holding or partnership interest must be a holding of the share capital of the non-resident company / partnership / EEIG / body of persons / collective investment scheme, entitling the holder to at least any two of the following rights:

- the right to vote;
- profits available for distribution and/or assets available;
- for distribution on a winding up.

A 'participating holding' is defined under the Income Tax Act (Chapter 123 of the

Laws of Malta) as an investment by a company which satisfies any one of the following conditions:

(1) such company holds directly at least 5% of the equity shares of a company whose capital is divided into shares, where such holding entitles the holder to at least 5% of any two of the following:

- right to vote;
- profits available for distribution; and
- assets available for distribution on a winding up; or

(2) the company is entitled, at its option, to acquire the equity shares which are currently not being held by such company; or

(3) the company is entitled to first refusal in relation to any disposal of the equity shares which are not held by such company; or

(4) the company is entitled to be appointed or to appoint a director to the board of directors of the company in which it holds such investment; or

(5) the company holds an investment of at least €1,164,000 and such investment is held for an uninterrupted period of at least 183 days; or

(6) the company holds such equity shares in the furtherance of its business and not as trading stock for the purpose of a trade.

ANTI-ABUSE PROVISIONS

The Participation Holding regime shall only be available with respect to dividends derived from a participation holding if at least one of the following conditions is satisfied by the participating holding:

(i) it is resident or incorporated in a country or territory which forms part of the European Union; or

(ii) it is subject to any foreign tax of at least 15%; or

(iii) it does not derive more than 50% of its income from passive interest or royalties; or

If none of the conditions (i) to (iii) above are satisfied, the participating holding must satisfy both of two further conditions:

- the participating holding must not be a portfolio investment; and
- must be subject to any foreign tax of at least 5%.

The participating holding exemption does not apply to any income derived from a participating holding in a body of persons that has been resident in a jurisdiction included in the European Union's list of non-cooperative jurisdictions for at least 3 months during the year preceding the year of assessment in question.



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