The Maltese taxation system

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Background

Malta is the only EU member state which adopts the full imputation system of taxation meaning that both resident and non–resident shareholders are entitled to a full credit of the income tax paid by the company on a distribution of dividends.

Prior to 1st January 2007, it was possible to set up International Trading Companies (ITC's) and International Holding Companies (IHC's) which restricted the tax advantages to non-resident persons.

Changes were effected to Maltese law to eliminate the discrimination between resident and non-resident shareholders and these changes have been approved and endorsed by the EU Commission.

This EU recognition and approval together with Malta having adopted the EU's Parent-Subsidiary directive and the Interest and Royalties Directive renders Maltese companies excellent vehicles for conducting international business and provides a very healthy tax environment for shareholders of such companies.

Trading Companies

A Maltese company is subject to a rate of tax equivalent to 35% on all its worldwide income. Nonetheless, due to the full imputation system of taxation adopted by Malta, upon a distribution of profits from the company to its shareholders, the shareholders are entitled to claim tax refunds of the tax paid by the company.

The amount of the refund varies according to the source of the profits from which the distributions are made.

i. **6/7th's refunds in respect of active income.** When dividends are made from profits arising out of active income, the shareholders are entitled to claim 6/7th's of the 35% tax paid by the company. This effectively means that the effective tax rate in Malta is only 5%.

ii. **5/7th's refunds in respect of passive interest and royalties.** When distributions are made from profits earned from passive interest and royalties' income, the shareholders are entitled to claim 5/7th's of the 35% tax paid by the company. This effectively means that the effective tax rate in Malta is only 10%.

iii. **2/3rd's refunds.** The 6/7th's and the 5/7th's refunds referred to above are only applicable in the event that a Maltese company has not claimed any form of double taxation relief. In fact when dividends are paid out of profits allocated to the foreign income account and out of which double tax treaty relief has been claimed, the shareholders may only apply for a 2/3rd's refund of the tax paid by the company.

Holding Companies

Holding companies that derive dividend income or capital gains from a "participating holding" are entitled to claim a full refund of tax paid by the company when distributions are made to its shareholders. The effective tax rate paid in Malta in similar cases would be 0%.

A Maltese company is considered to have a "participating holding" if it holds equity shares in a non-resident company or a qualifying body of persons and it:

i. has at least **10% of the equity shares** in the non-resident company; or

ii. is an **equity shareholder** in the non-resident company and is **entitled to purchase the balance** of the equity shares of the non-resident company, or it has the **right of first refusal** to purchase such shares; or

iii. is an **equity shareholder** in the non-resident company and is entitled to either **sit on the Board** or **appoint a person on the Board** of that subsidiary as a director; or

iv. is an equity shareholder which invests a minimum in the non-resident company of **Euros 1,164,686.60** and such investment is held for at least a period of **183 days**; or

v. holds the shares in the non-resident company **for the furtherance of its own business** and the holding is **not held as trading stock** for the purpose of a trade.

Light anti-abuse provisions apply for all companies which acquire a "participating holding" after 1st January 2007. In any such event the foreign subsidiary must satisfy any one of the following three conditions:

- It is resident or incorporated in the EU
- it is subject to foreign tax of a minimum of 15%
- It does not derive more than 50% of its income from passive interest and royalties

or alternatively must satisfy both of the following conditions:

- the shares in the non-resident company must not be held as a portfolio investment; and
- the non-resident company or its passive interest or royalties have been subject to tax at a rate which is not less than 5%.

Dividends derived from a participating holding after 1st January 2007 may qualify for a "participation exemption" if the light anti-abuse conditions referred to above are met.

In any such event, the Maltese company has the option not to declare the income in its income tax return with the end result being that no tax is paid in Malta. If the company elects to declare its income from the "participating holding" in its income tax return, it would still qualify for a full refund of the tax paid by the Maltese company with the refund given within fourteen (14) days following the end of the month in which the claim is made.

It is interesting to note that under the new tax system, branches of overseas companies are treated like any other company registered in Malta and the tax accounting system and tax refund system may also apply.

Other information and summary

- Malta has **no capital duties and wealth taxes**;
- **No stamp duties on share transfers** in companies owned by non-residents;
- Non-residents are **exempt from any capital gains** on certain share transfers;
- Maltese companies may benefit from the **EU Parent-Subsidiary Directive** and the **Interest and Royalties Directive** apart from a wide tax treaty network;
- Under the **redomiciliation** provisions it is possible to migrate companies into and out of Malta without the need of winding up or liquidation costs (see separate factsheet on redomiciliation of companies to Malta);
- **No exchange control regulations** and business may be conducted freely in any currency
- The submission of annual audited accounts to the Inland Revenue Department proves that the company is **not a tax evasion structure**;
- **Complete anonymity** of the beneficial owners;
- **EU VAT number** for EU Trading companies;
- **No withholding taxes** on **distribution of dividends** to the shareholders;
- **No withholding taxes on interest, licence fees and royalties**;
- **24 hour registration** from the moment all documents are in hand;
- **No requirement** to have **meetings in Malta**;
- **No disclosure of beneficial owners** to the Company Registrar if using a fiduciary arrangement.

Further information

Please contact **Dr. Antoine Naudi** by e-mail (anaudi@naudimizzi.com) or telephone (+356 2133 6555) or visit **www.naudimizzi.com**

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- Applications for tax refunds

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