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Case study:

**Structuring  
overseas real estate  
investment through  
a Malta Holding  
Company**

**Abie International** 

# Case Study:

## Structuring overseas real estate investment through a Malta Holding Company

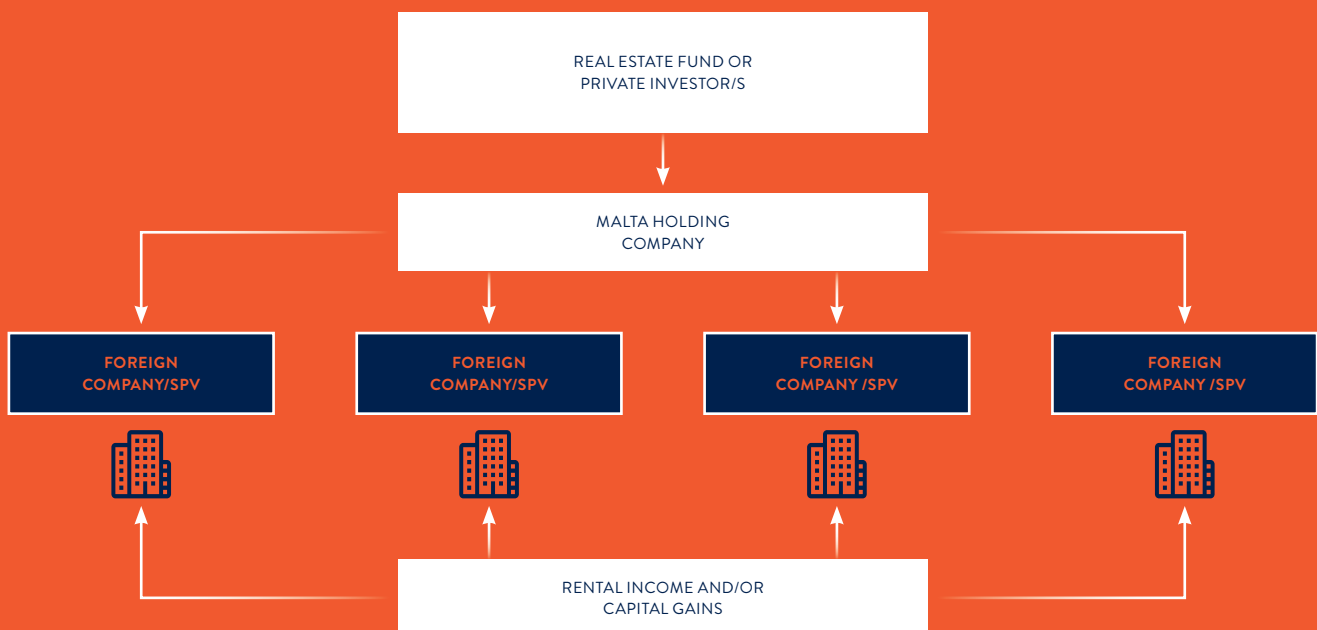
*This Guidance note is designed to provide some basic information regarding some of the key features, benefits and other considerations arising from structuring a Portfolio of Real Estate investments through a Malta Holding company.*

In the example below, a real estate investor has diverse real estate interests located in different jurisdictions<sup>1</sup>. The investor may be a Fund, Family office or a privately held investment group. Each investment has been made via an SPV domiciled in the location of the real estate.

A Malta Holding Company has been set up overlying all the SPVs. Each SPV generates rental income or capital gains from the exit of properties, or a combination of both.

In a scenario where other entities might be co-investing on some of the real estate opportunities, separate Malta Holding Companies may be set up as feeder vehicles for the co-investment to take place.

<sup>1</sup>It is assumed that the Real Estate is not located in Malta as otherwise some of the analysis discussed may not apply.



## KEY CONSIDERATIONS ARISING FROM THE STRUCTURE

### AT THE SPV LEVEL

- Each SPV receives income or capital gains from the exit of properties which may be upstreamed to the Malta Holding Company as a dividend.
- Dividends paid out of the SPV to the Malta Holding Company may benefit from the E.U. Parent-Subsidiary directive which provides for no withholding tax to be applied by the SPV subject to certain conditions being met. In the event that the SPV has not been established from within the EU, it is still possible to obtain a reduced rate of withholding tax on the dividend provided the SPV is from one of the jurisdictions in respect of which Malta has a double taxation treaty in place.

### AT THE MALTA HOLDING COMPANY LEVEL

- Subject to certain conditions being met (discussed under the section below 'What is the Participation Exemption'), the Malta Holding Company would regard each SPV as a Participating Holding further to which no Malta tax is suffered upon receipt of the dividend.
- Should the Malta Holding Company alternatively sell the SPV (as opposed to selling the real estate held by it) any capital gain realized from such sale would also be exempt from Malta tax in terms of the Participation Exemption.
- As Malta does not apply a withholding tax on the upstreaming of dividends out of a Malta Company, the structure also provides a mechanism for upstreaming the dividend income/realized capital gains from the Malta Holding Company to its shareholding entity.

### At The Real Estate Fund/ Malta Shareholder Level

- Non-Malta resident shareholders are exempt from any withholding tax upon receipt of a dividend from the Malta Holding Company and are not subject to Malta income tax.
- Any capital gains arising from the transfer/sale of the investors' interest in the Malta Holding Company are exempt from tax in Malta.

## OTHER FEATURES AND BENEFITS OF A MALTA HOLDING COMPANY

A Malta Holding company has become a vehicle of choice for a wide variety of businesses, from small enterprises with a limited number of shareholders and employees to large multinational groups.

The constitution of a Malta Holding company can be drafted to provide full flexibility enabling the company to carry out its intended activity. It can also cater for various asset classes to be held by the company ranging from Intellectual Property and Real Estate to Private Equity investments and other assets.

There is also flexibility in terms of the capital structure that may be implemented and specific features of equity and debt can also be catered for.

Other features of a Malta Holding company include:

- Ease of incorporation.
- Free choice of denomination of the share capital of the company.
- Low minimum capital requirements (minimum of EUR1,165 with 20% being paid-up).
- No corporate tax on holding companies in respect of dividends and gains derived from underlying entities qualifying as participating holdings.
- No withholding taxes on dividends, interest and royalties paid out of the Company to non-resident individuals or entities, within or outside of the EU.
- Extensive use of Malta's double tax treaty network with in-excess of 70 countries.
- Capital gains on the transfers of shares in the Maltese company by non-resident shareholders are normally exempt.
- A flexible transfer pricing regime.
- No stamp duty is payable on the issuance of shares upon incorporation. Stamp duty payable upon the issuance of further shares or share transfers in companies held by non-residents can also be exempt subject to certain conditions being met.
- As an EU member, the application of provisions in the Parent-Subsidiary Directive and Interest & Royalties Directive result in further tax planning opportunities for a Malta Company.
- Possibility of redomiciling companies to and from Malta.
- No exchange controls.
- Tax losses can be carried forward indefinitely.
- No capital, inheritance or wealth taxes.

## WHAT IS THE PARTICIPATION EXEMPTION?

Income or capital gains derived by Malta Holding companies from qualifying participating holdings (“PH”) is exempt from tax in Malta at the option of the company subject to the fulfilment of certain conditions as set out below.

An investment qualifies as a PH where a Malta company is an equity shareholder in another company and:

- A. Holds directly at least 5 percent of the equity shares of such company, which holding confers an entitlement to at least five per cent of any two of the following (“equity holding rights”): right to vote; profits available for distribution; and assets available for distribution on a winding up; or
- B. Is entitled at its option to call for and acquire the entire balance of the equity shares not held by that equity shareholder company to the extent permitted by the law of the country in which the equity shares are held; or
- C. Is entitled to first refusal in the event of the proposed disposal, redemption or cancellation of all of the equity shares of that company not held by that equity shareholder company; or
- D. Is entitled to either sit on the Board or appoint a person to sit on the Board of that company as a director; or
- E. Holds an investment representing a total value, as on the date or dates on which it was acquired, of a minimum of one million, one hundred and sixty-four thousand euro (€1,164,000) (or the equivalent sum in a foreign currency) and that investment is held for an uninterrupted period of not less than 183 days; or
- F. Such shares are held for the furtherance of its own business and the holding is not held as trading stock for the purpose of a trade.

*Equity shares* refers to a holding of the share capital in a company which entitles the shareholder to at least any two of the following three rights:

- the right to vote;
- the right to profits available for distribution to shareholders; and
- the right to assets available for distribution on a winding up of the company.

## BENEFITS OF THE PARTICIPATION EXEMPTION

Capital gains derived from the disposal of a PH may be exempt from tax in Malta.

On the other hand, dividend income from a PH may also be exempt from tax in Malta provided that the company in which the PH is held falls within **one** of the following safe harbours:

- Resident or incorporated in the EU;
- Subject to any foreign tax at a rate of at least 15%;
- Less than 50% of its income is derived from passive interest or royalties.

Where the conditions for the eligibility of an investment as a PH are not met, or where a company elects not to apply the PH exemption, chargeable income less deductible gains are assessed at the corporate tax rate of 35%.

Malta operates a tax refund mechanism, whereby upon the declaration by the Malta company of a dividend to its shareholders, the latter will be entitled to apply for a tax refund, which is broadly calculated as follows:

- 100% of the Malta tax paid where income or gains are derived from an investment which qualifies as a PH and in the case of dividend income;
- 5/7<sup>ths</sup> of the Malta tax paid, where the income received by the company is passive interest or royalties or income from a PH which does not fall within the safe harbours or satisfy the anti-abuse provisions;
- 2/3<sup>ths</sup> of the tax payable in Malta, where income has benefited from double taxation relief.
- 6/7<sup>ths</sup> of the Malta tax paid in all other cases.

Our team will be pleased to discuss this further with you.

For further information please contact

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