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Guidance note:

The Malta Holding Company

Abie International

Guidance note on the 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 using a Malta Holding company

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 to be adopted and any 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 €1,165 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$^{\text{ths}}$ 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$^{\text{rds}}$ of the tax payable in Malta, where income has benefited from double taxation relief.
- 6/7$^{\text{ths}}$ 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

Nissim Ohayon

nohayon@abieinternational.com.mt
T. +356 2149 1068

Abie International

The Watercourse
Central Business District – Zone 2
Mdina Road
Birkirkara CBD 2010
Malta

T. +356 2149 1068
nohayon@abieinternational.com.mt