KINANIS
CONSULTING

DOING BUSINESS THROUGH MALTA - AN OVERVIEW

2012

Contents

A. WHY MALTA

The Maltese Company is a European jurisdiction Company which offers multiple tax and investment benefits for advantageous tax planning structures.

In particular, Malta boasts the following selling points:

- Low corporate tax (maximum of 5% or lower effective tax rate for trading companies);
- Strategic geographical location in the centre of the Mediterranean;
- Extremely stable economy and government;
- Provides the investor with a stable investment atmosphere;
- Offers the investor unsurpassable tax benefits.

The following gives an overview of the geographical, political, economic and working environment of Malta:

Capital city	Valletta
European Union	Member of the European Union since 2004
Currency	Euro (€)
Official languages	Maltese and English. The business language is however English.
Legal system	Civil law jurisdiction but administration, financial and fiscal legislation is based on the Common Law system.

B. THE MALTESE COMPANY

Company registration in Malta is a fairly fast process and the whole procedure may take as short as 24 hours.

The most salient requirements of a Maltese registered limited liability company comprise of the following:

- A registered office in Malta;
- A minimum of two shareholders;
- One Secretary who must be a physical person;
- At least one Director;
- Memorandum and Articles of Association;
- Proof of payment of share capital (minimum share capital €1,165,00).

A company is further obliged to keep accounts. The default accounting standard is the International Financial Reporting Standards (IFRS) though companies with certain characteristics may apply the General Accounting Principles for Smaller Entities (GAPSE).

Furthermore, annual audited accounts have to be submitted to the Registry whilst the Annual Return must also be filed accordingly.

The fiscal selling points of the Maltese Company comprise of the following:

- Full imputation system meaning that the corporate profits are only taxed at company level. This means that taxation paid is available as a credit for the shareholder when a distribution of profits takes place;
- For trading Companies the maximum effective tax rate is at 5%;
- No Withholding Taxes on Dividends, Interest and Royalties to non-residents;
- No CFC Rules, Transfer Pricing or Thin Capitalization Rules;
- Group Relief is available;
- Double Taxation Relief mechanisms available;
- Over 60 Double Taxation Treaties;
- No exit/entry taxes;
- No Capital duty or net worth taxes;
- No taxes for capital gains made by non-residents pursuant to disposal of shares in a Maltese Company (provided its assets do not consist an immovable property in Malta).

C. MALTA TAX REFUNDS - LOWEST TAX IN THE EU

Despite having a corporate tax of 35%, Malta offers tax credits to the shareholder that result in an **effective tax rate of 5% corporate tax or even less** in certain instances. This transforms Malta into a rather attractive jurisdiction and to this effect, has been also branded the title of one of the top tax-friendly states in the world by Forbes.

The main benefits offered to the non-resident shareholders revolve around a system of the Inland Revenue granting tax refunds following the payment of the corporate tax in question.

This is coupled with Malta's use of the Full-Imputation Tax Credit System under which company profits are only taxed at the company level, and not taxed again in the hands of the shareholder. There are in fact, **no withholding taxes imposed on dividends.**

In brief, the tax refund is:

- Given as a tax credit to the shareholder (including corporate shareholder) of the Maltese Company;
- Calculated as a percentage of the corporate tax (at 35%) suffered by the company - hence the shareholder will get a refund of a percentage of tax which was paid at company level;
- Available upon the distribution of final dividends (not interim) by the Maltese Company - a dividend warrant has to be produced to the Inland Revenue to attest this;
- Available if the shareholder is registered with the Maltese Revenue;
- Refund paid within 14 days by the Inland Revenue at the end of the month within which it becomes due.

The following are the tax refunds available under the Maltese Tax regime:

- **Six-sevenths (6/7)** Refund of corporate tax (35%) paid by the Maltese Company and **is available to the shareholder of a Trading Company;**
- **Five-sevenths (5/7)** Refund of corporate tax (35%) paid by the Maltese Company and **is available to the shareholder of companies deriving income from Passive Interest or Royalties;**
- **Two-thirds (2/3)** Refund of corporate tax (35%) paid by the Maltese Company and **is available to shareholder of companies who have claimed double taxation relief.**

D. MALTESE TRADING STRUCTURE - 5% EFFECTIVE TAXATION

- **Benefits and Uses of the Maltese Trading Company**

The Maltese Trading Company provides the most tax effective scheme for a European Jurisdiction and is especially suited for triangular trade within the European Union as well as good vehicle for worldwide imports and exports.

- **Basic Trading Structure**

FOREIGN SHAREHOLDER — 6/7 Refund €30

↑ **Dividend of €65**

MALTESE TRADING CO. — Corporate Tax at 35% on net profits €35

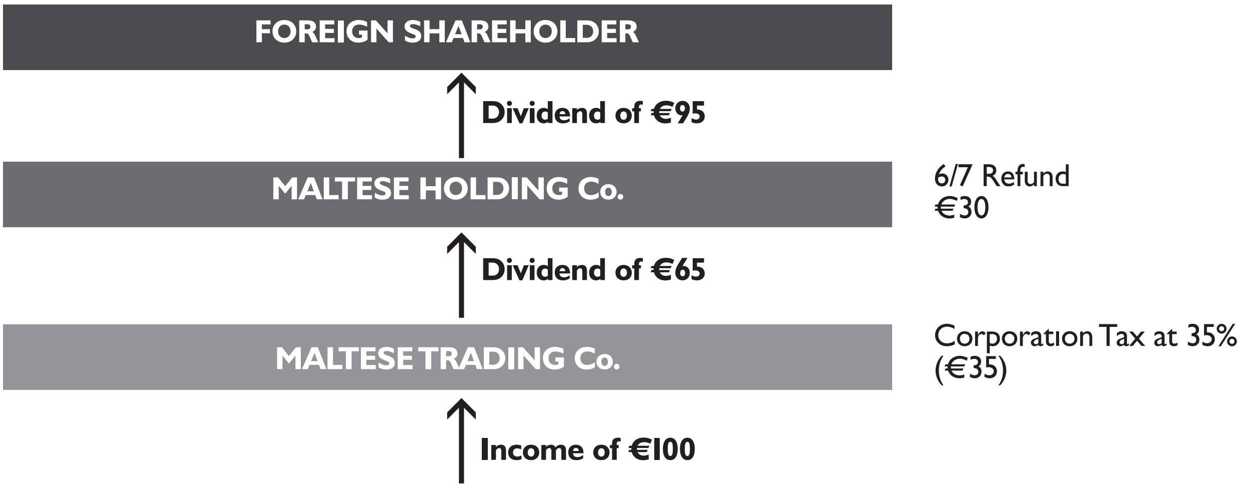
↑ **Income of €65**

The structure above features the following:

- The Maltese Trading Company generates income from its trading activities;
- Malta Corporate Tax of 35% on net profits is applied to Maltese Trading Co.;
- Upon a distribution of dividends, the foreign shareholder is entitled to a 6/7 refund of the Malta corporate tax paid by the trading company;
- No withholding taxes on dividends paid to the foreign shareholder;
- Effective tax rate of 5%;
- VAT registration may be required.

- **Two-Tier Trading Structure**

It is often the case were a two-tier trading structure is used, which combines a Maltese Trading and a Maltese Holding company in order to mitigate the risk of tax liability to be generated at the shareholder level on the amount of refund received, as well as maintaining confidentiality, since the foreign shareholder will not be obliged to be registered with the Tax Authorities in Malta.



The structure above features the following:

- The Maltese Trading Company generates income from its trading activities;
- Malta Corporate Tax of 35% on net profits is applied to the Maltese Trading Co;
- Upon a distribution of dividends to the Maltese Holding Co, the latter may claim a 6/7 refund of Malta corporate tax paid by the Maltese Trading Co;
- Dividend income and the tax refund received by the Maltese Holding Co is not liable to any further tax in Malta;
- The Maltese Holding Company can distribute in full both the tax refund and the dividend income received to its foreign shareholder;
- No withholding taxes on dividends paid to the foreign shareholder.

E. MALTESE HOLDING COMPANY - 100% TAX EXEMPTION

- **Benefits and Uses of the Maltese Holding Company**

Apart from the preferential tax treatment offered to trading companies discussed above, Malta is also a favourable 'Holding' jurisdiction. In brief, a Holding Company may benefit from **a total exemption** on corporate tax in Malta, provided the criteria listed below are satisfied. Additionally, Malta imposes no withholding tax on dividends distributed from a Maltese Company to its shareholder, whilst the use of Parent-Subsidiary Directives and the wide network of double tax treaties make the jurisdiction even more attractive.

- **Qualifying as a Participating Holding**

The special treatment offered to a Maltese Holding company is that it provides a choice between a full-refund (i.e. 100% of tax paid will be refunded to the shareholder) or a total tax exemption (i.e. no need to proceed to tax payment) on any dividend income or capital gains, provided it qualifies as a 'participating holding'. Opting to be exempt rather than getting the refund has a number of advantages, including cash flow advantages and non-disclosure to the Maltese Revenue in Tax Returns.

A Maltese Company qualifies as a participating holding (total tax exemption) in a non-resident entity[1] if:

- it holds directly at least 10% of equity shares[2] of an entity; or
- it is an equity shareholder in a company and is entitled to acquire the entire balance of shares; or
- it holds equity shares in an entity and is entitled to first refusal in the event of the proposed disposal, redemption or cancellation of all of the equity shares; or
- it holds equity shares in an entity entitling it to either sit on the Board of Directors or to appoint a person to sit on the Board of that company as a director; or
- it holds equity shares in an entity having an investment value of €1.164.000,00 and held for an uninterrupted period of not less than 183 days; or
- it holds equity shares for the furtherance of its own business and is not held as trading stock for the purpose of a trade.

Additionally to the above-referred criteria in the case of dividend income the full refund or exemption will only be made available to the Maltese participating Holding if the non-resident entity held, paying the dividend satisfies anyone of the below three conditions:-

- Is resident or incorporated in the European Union; or
- Is subject to a minimum of 15% foreign tax; or
- Does not derive more than 50% of its income from passive interest and royalties (i.e. must be a trading entity).

If none of these three is satisfied, in order for the full refund or exemption to be made available **BOTH** of the below conditions must be met:-

- The equity holding by the Maltese Company in the body of persons not resident in Malta is not a portfolio investment; and
- The body of persons not resident in Malta or its passive interest or royalties have been subject to any foreign tax at a rate which is not less than 5%.

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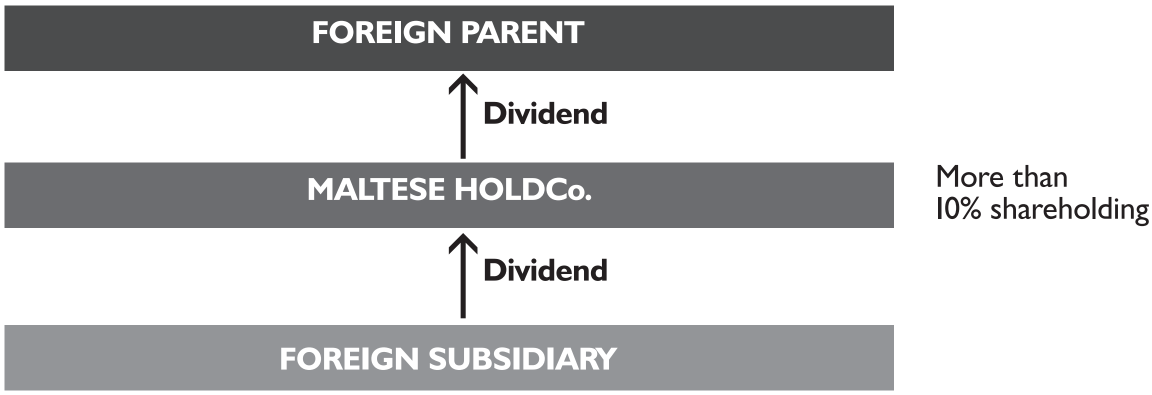
[1] Entity includes a partnership en commandite the capital of which is not divided into shares. The holding of the Malta Company in a body of persons or a Collective Investment Vehicle providing for limited liability of investors also constitutes a Holding provided one of the above conditions is satisfied.

[2] Equity shares carry voting and dividend rights and an entitlement to assets available in the event of winding up.

The below structures are amongst the most common Holding structures where the benefits of using a Maltese Holding Company can be obtained:-

- **Holding of Overseas Investments**

Due to its very beneficial tax regime and the application of the EU Parent-Subsidiary Directive and the wide network of double tax treaties, the Maltese Holding company is used widely as a holding of overseas investments.

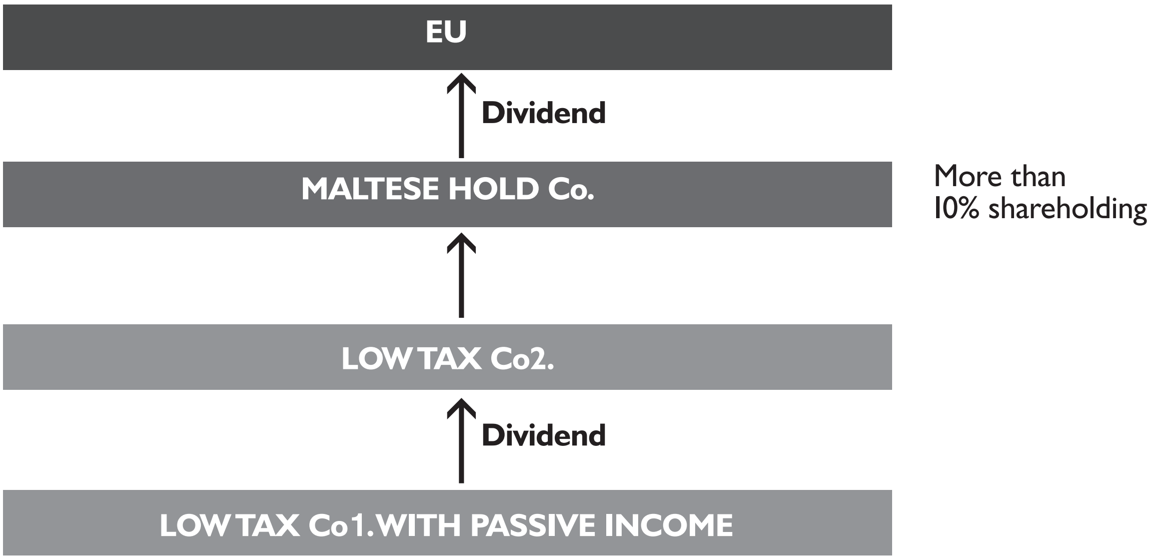


The structure above features the following:

- The investment in the Foreign Subsidiary qualifies as a Participating Holding;
- There are low or no withholding taxes on dividend received in the Maltese HoldingCo using the treaty network of the EU directives;
- Dividend income is exempt from Maltese taxation or full refund available on the tax paid on the dividends received;
- No Withholding Tax in Malta on dividends paid to the Foreign Parent;
- Foreign Parent may be resident anywhere in the world;
- No capital gains tax on potential sale of the investment;
- Effective tax rate in Malta is 0%.

- **Entry Route into the EU**

The below structure can be used in order to introduce funds into European Holding Companies with minimum or no tax leakage.

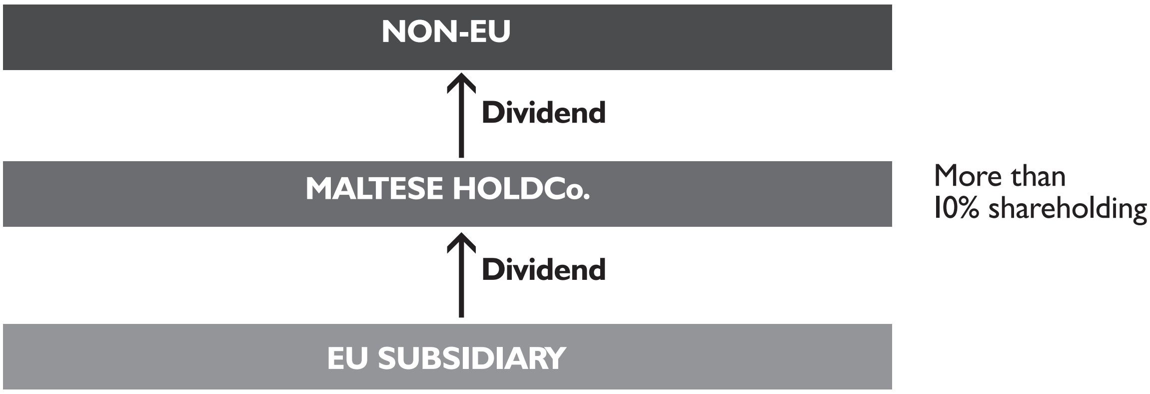


The structure above features the following:

- If the Low Tax Co1 is not subject to a minimum of 5% tax or if it derives more than 50% of its income from passive interest or royalties, the Low Tax Co2 may be inserted since the holding of shares does not qualify as passive interest or royalties.
- The investment in Low Tax Co2 will therefore qualify as a Participating Holding.
- Malta 100% tax exemption applies on Dividend income from Low Tax Co2
- No Withholding Tax in Malta on dividends paid to the EU Shareholder.
- Effective tax rate in Malta is 0%.

- **Exit Route from the EU**

The below structure can be used in order to provide for an exit of funds from the European Union with minimum or no tax leakage.



The structure above features the following:

- The investment in the EU Subsidiary qualifies as a Participating Holding;
- No withholding tax on dividends paid by the EU Subsidiary to the Maltese HoldCo given that the Parent-Subsidiary Directive conditions are met;
- Dividend income received by the HoldCo from the EU Subsidiary is exempt from taxation in Malta;
- No Withholding Tax in Malta on dividends paid to the non-EU Shareholder;
- Effective tax rate in Malta is 0%.

F. MALTA DOUBLE TAXATION TREATIES

The extensive network of Double Tax Treaties renders the use of the Maltese Companies as an ideal and valuable tool in International Tax Planning. The list of countries with which Malta has signed a double tax treaty is indicated in the table below:

The European Union		Europe	Rest of the World	
Austria	Latvia	Albania	Australia	Libya
Belgium*	Lithuania	Croatia	Barbados	Malaysia
Bulgaria	Luxembourg	Iceland	Bahrain	Morocco
Cyprus	Netherlands	Norway	Canada	Pakistan
Croatia	Poland	San Marino	China	Qatar
Czech Republic	Portugal	Iceland	Egypt	Saudi Arabia*
Denmark	Romania	Isle of Man	Georgia	Singapore
Estonia	Slovakia	Jersey	Guernsey*	South Africa
Finland	Slovenia	Montenegro	Hong Kong	Syria
France	Spain	Norway*	India	Tunisia
Germany	Sweden	San Marino	Israel*	Turkey*
Greece	U.K.	Serbia	Jordan	U.A.E.
Hungary		Switzerland	Korea (Rep.)	Uruguay*
Italy			Kuwait	U.S.A.
			Lebanon	

** Denotes that the Treaty has been signed but not yet entered into force.*

G. DISCLAIMER

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The Firm

Kinanis (Malta) Limited is a Maltese corporate service provider specializing in corporate and tax advice excelling in providing the international investor with a one-stop-shop solution in doing business through Malta.

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- **Trusts Formation**
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