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Case Studies
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Date:

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Participation Exemption

Participation Exemption

Pine Limited a company which is both resident and domiciled in Malta has an investment in Nazzar Limited which qualifies as a Participating Holding in terms of the Income Tax Act. Nazzar Limited is a company incorporated in Chile and is subject to tax at the rate of 15% in Chile. Nazzar Limited's income is made up entirely of interest on a single loan granted to the Municipal Council of Santiago.

The company also has an investment of EUR 1,400,000 in Manny Limited bought the previous year. The investment grants Pine Limited 4% of the equity holding of Manny Limited. Manny Limited is resident in Portugal. Portugal has a corporate tax rate of more than 15%.

Pine Limited conducts part of its operation through a branch in Denmark which was profitable during the year ending 31st December 2025.

Pine Limited owns the entire share capital Duffly Limited a company which is both resident and domiciled in Malta.

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Participation Exemption

During the calendar year 2025, Pine Limited received a dividend of EUR 10,000 from Nazzar Limited and a dividend of EUR20,000 from Manny Limited. Kindly indicate the tax treatment of the dividend from a Maltese income tax perspective.

Dividend from Nazzar Limited

- Given that a Participation Holding Exist
- Does Dividend satisfy the anti-abuse provisions?

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Participation Exemption

- Exemption on dividend income from a PH - at least 1 of the following conditions must also be satisfied:

  - Body of persons is resident or incorporated in the EU -*No*
  - Body of persons is subject to any foreign tax of at least 15% - *Yes*
  - Body of persons does not have more than 50% of its income derived from passive interest or royalties - *No*
  - PH is not a portfolio investment and the foreign body of persons or its passive interest or royalties have been subject to foreign tax of at least 5% *Yes*

Conclusion: The participation exemption can apply for the dividend income.

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Participation Exemption

Dividend from Manny Limited

- Given that the company holds more that EUR1.164 million of the equity shares of Manny Limited for more than 183 days, a participation holding exists.

- Does Dividend satisfy the anti-abuse provisions?

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Participation Exemption

- Exemption on dividend income from a PH - at least 1 of the following conditions must also be satisfied:

  - Body of persons is resident or incorporated in the EU -*Yes*
  - Body of persons is subject to any foreign tax of at least 15% - *Yes*
  - Body of persons does not have more than 50% of its income derived from passive interest or royalties - *No*
  - PH is not a portfolio investment and the foreign body of persons or its passive interest or royalties have been subject to foreign tax of at least 5% *Yes*

Conclusion: The participation exemption can apply for the dividend income.

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Participation Exemption

From further information obtain it transpired that the dividend was treated as a tax-deductible expense for Manny in Portugal. Does this in any way effect your answer

- YES

- Participation cannot be applied in this case

- Anti avoidance condition:

    - *"Provided further that as from 1st January, 2016, in the case of distributed profits received from a participating holding by a parent company that is resident in Malta or the permanent establishment of a parent company that is resident in another EU Member State, which permanent establishment is situated in Malta and which benefit from the exemption from withholding tax set out in article 5 of EU Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States as amended, the exemption under the provisions of subparagraph (u)(1) shall only apply to the extent that such profits are not deductible by the relevant subsidiary in that other EU Member State."*

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Participation Exemption

- How is the income of the branch treated for Maltese income tax purposes
  - *Exempt under 12(1)(u)(ii) – Branch exemption*

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Participation Exemption

- During the calendar year 2026, Pine Limited is considering selling all the shares of Duffly Limited. Would the company be able to claim the participation exemption on any capital gain derived from the disposal of such shares?

- Depends – Are the Bos/ BO exempt in terms of Article 12(1) (c) (ii) ITA - (gains or losses derived by non-residents after the transfer of securities),.

- If yes – then the capital gain on the disposal of shares can be subject to the participation exemption.

- If not all the Bos are exempt then the participation exemption can be applied pro rata.

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Participation Exemption

- Note:
  - Subsequent share transfer

  - If by means of a subsequent share transfer a non qualifying shareholder thereafter becomes beneficially entitled to all or any of such profits even prior to their distribution such untaxed gain or profits shall be taxed at the rate of 35% and such tax shall constitute tax payable by the company in the year of assessment in respect of which such person shall become entitled to such profits even prior to their distribution.

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Case Study – NID & Refunds

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NID & Refunds

Abacus Limited, a Malta company, has the following balance sheet and profit and loss account for the financial year ended 31 December 2025. Included within 'Borrowings' is an interest-free loan of €400,000 which Abacus Limited received from a related company Manga Limited specifically to acquire a 4% investment in Xolas SA, a company incorporated in Spain. On 31St December 2025 Abacus Limited distributed net divided of €432,900 to it's sole shareholder Gem Limited. The dividend was declared but not yet paid as of 31St December 2025. Gem Limited is a Malta resident and domiciled company which has been registered as a shareholder for refund purposes. The profit and loss account of Gem Limited is also provided.

Assume that the yield to maturity on Malta Government stocks with a remaining term of approximately 20 is 4%

- Calculate tax due both for Abacus Limited and Gem Limited.
- Make the correct tax account allocations for both companies
- Calculate the refundable tax credited claimable by Gem Limited

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NID & REFUNDS – ABACUS LIMITED

Balance sheet as at 31 Dec 2025			**Profit and Loss Account**				
	€			€			
Property, Plant & Equipment	5,750,000		Revenue (trading income)	1,200,000			
Investment in Xolas SA	400,000		Cost of Sales	(300,000)			
Trade & Other receivables	3,200,000		Gross Profit	900,000			
Cash & Cash equivalents	3,150,000		Dividend income from Xolas SA	36,000			
Total Assets	**12,500,000**		Profit before tax	936,000			
			Tax	(245,700)			
Equity			Profit after tax	690,300			
Share capital	400,000						
Share premium	800,000						
Retained profits	567,100						
	1,767,100						
Liabilities							
Borrowings	700,000						
Amounts owed to Shareholder	432,900						
Trade & Other payables	9,600,000						
	10,732,900						

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NID & REFUNDS

	€															
Share capital	400,000			Note NID is calcualted taking Risk Capital multiplied by the reference rate												
Share premium	800,000															
Retained earnings	567,100															
Amounts owed to Shareholder	432,900															
Interest-free loan	400,000															
	2,600,000															
Step 2 - Remove invested risk capital																
In this example, it is assumed that there is no risk capital which is not employed in producing any income or employed in producing exempt income.																
Step 3 - Attribution of risk capital																
Direct Attribution																
Is there capital employed in acquiring any specific source of income?																
Yes, the interest-free loan of €400k was employed in acquiring the investment in Xolas SA and consequently the dividend income therefrom.																
Yes, the other risk capital is financing the remaining operations of the company.																

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NID &REFUNDS

Tax computation	MTA (Trading)	FIA - Dividend (passive)	Total					
	€	€	€					
Revenue	1,200,000	-	1,200,000					
Cost of sales	(300,000)	-	(300,000)					
Dividend income	-	36,000	36,000					
Profit before tax	900,000	36,000	936,000					
NID - Direct Allocation of Risk Capital	-	400,000	400,000					
Directly attributable NID	-	(36,000)	(36,000)					
Capped at amount of income	-	(36,000)	(36,000)					
Income after allocation of directly attributable NID	900,000	-	900,000					
Directly attributable NID other source of income								
Directly attributable risk capital other source of income			2,200,000					
Allocation of NID	(198,000)		(198,000)	Since NID is less than 90%				
Capped at 90%	(198,000)		(198,000)	capping is lower of NID and 90%				
Chargeable income after NID	702,000	-	702,000					
Tax at 35%	(245,700)	-	(245,700)					
Profits after tax	**456,300**	**-**	**456,300**					
NID carried forward	-	-	-					

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NID & REFUNDS

	MTA (Trading)	FIA - Dividend (passive)	Total		
	€	€	€		
Chargeable income after NID	702,000	-	702,000		
Tax at 35%	(245,700)	-	(245,700)		
Profits after tax	**456,300**	**-**	**456,300**		
NID carried forward	-	-	-		
Allocation of profits to tax accounts	**MTA**	**FTA**	**UA**	**Distributable profits**	
Prior to additional allocation of NID	456,300	234,000	-	690,300	
Additional allocation to FTA					
10% of NID and	(23,400)	23,400			
Allocation to tax accounts for the year	**432,900**	**257,400**	**-**	**690,300**	

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NID & REFUNDS

Effective Tax Rate	**26%**
(tax/profit before tax)	245,700
	936,000
Dividend Distributed out of MTA @35%	
Gross	666,000
Tax	(233,100)
Net	432,900
Applicable refund in the hands of the shareholder	
6/7 refund of	233,100
Total refund	**199,800**
Effective tax rate following refund	**4.9%**
(tax less refund)/profit before tax	245,700-199,800
	936,000

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NID & REFUNDS – GEM LIMITED

Balance sheet as at 31 Dec 2025			**Profit and Loss Account**				
	€			€			
Investment in Abacus Limited	1,200,000		Dividend received from Abacus Limited	666,000			
Cash & Cash equivalents	1,067,100						
Amounts receivable from subsidiary	432,900		Adminstrative expenses	(300,000)			
Total Assets	**2,700,000**		Profit before tax	366,000			
			Tax	(233,100)			
Equity			Profit after tax	132,900			
Share capital	400,000						
Share premium	800,000						
Retained profits	1,400,000						
	2,600,000						
Liabilities							
Other payables	100,000						
	100,000						
Total Equity & Liabilities	**2,700,000**						

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NID & REFUNDS – GEM LIMITED

Risk capital calculation	
	€
Share capital	400,000
Share premium	800,000
Retained earnings	1,400,000
	2,600,000

The shareholder is allowed to take 100% of NID calcuated against any deemed interest income

Deemed interest income amounts to €234,000. (Note all deemed interest income is always attributed to the shareholder irrespective of who supplied the risk capital)

Disallowed expenses

Since the company did not trade all expenses are disallowed

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NID & REFUNDS –GEM Limited

Tax computation	MTA (dividends from MTA	Deemed Interest Income	Total					
	€	€	€					
Dividend income	666,000	-	666,000					
Administrative expenses	(300,000)	-	(300,000)					
Profit before tax	366,000	-	366,000					
Deemed Interest Income		234,000	234,000					
Disallowed expenses	300,000		300,000					
Chargable Income	**666,000**	**234,000**	**900,000**					
Driectly attributable NID								
Directly attributable risk capital			2,600,000					
Allocation of Directly attributable NID	-	(234,000)	(234,000)					
Chargeable income after NID	666,000	-	666,000					
Tax at 35%	(233,100)	-	(233,100)					
Profits after tax	**432,900**	**-**	**432,900**	No tax is payable as tax has already been paid at source*				

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NID &REFUNDS –GEM Limited

Chargeable income after NID	666,000	-	666,000					
Tax at 35%	(233,100)	-	(233,100)					
Profits after tax	**432,900**	**-**	**432,900**	No tax is payable as tax has already				
				been paid at source*				
NID carried forward	-	-	-					
* Full Imputation system								
Tax Due Gem Limited	233,100							
Tax paid by Abacus Limited	(233,100)							
(full imputation crediit)								
Tax Due Gem Limited	-							
Allocation of profits to tax accounts	**MTA**	**FTA**	**UA**	**Distributable profits**				
Prior to additional allocation of NID	432,900	234,000	(534,000)	132,900				
Additional allocation to FTA								
10% of NID	-	-						
Allocation to tax accounts for the year	**432,900**	**234,000**	**(534,000)**	**132,900**				

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