



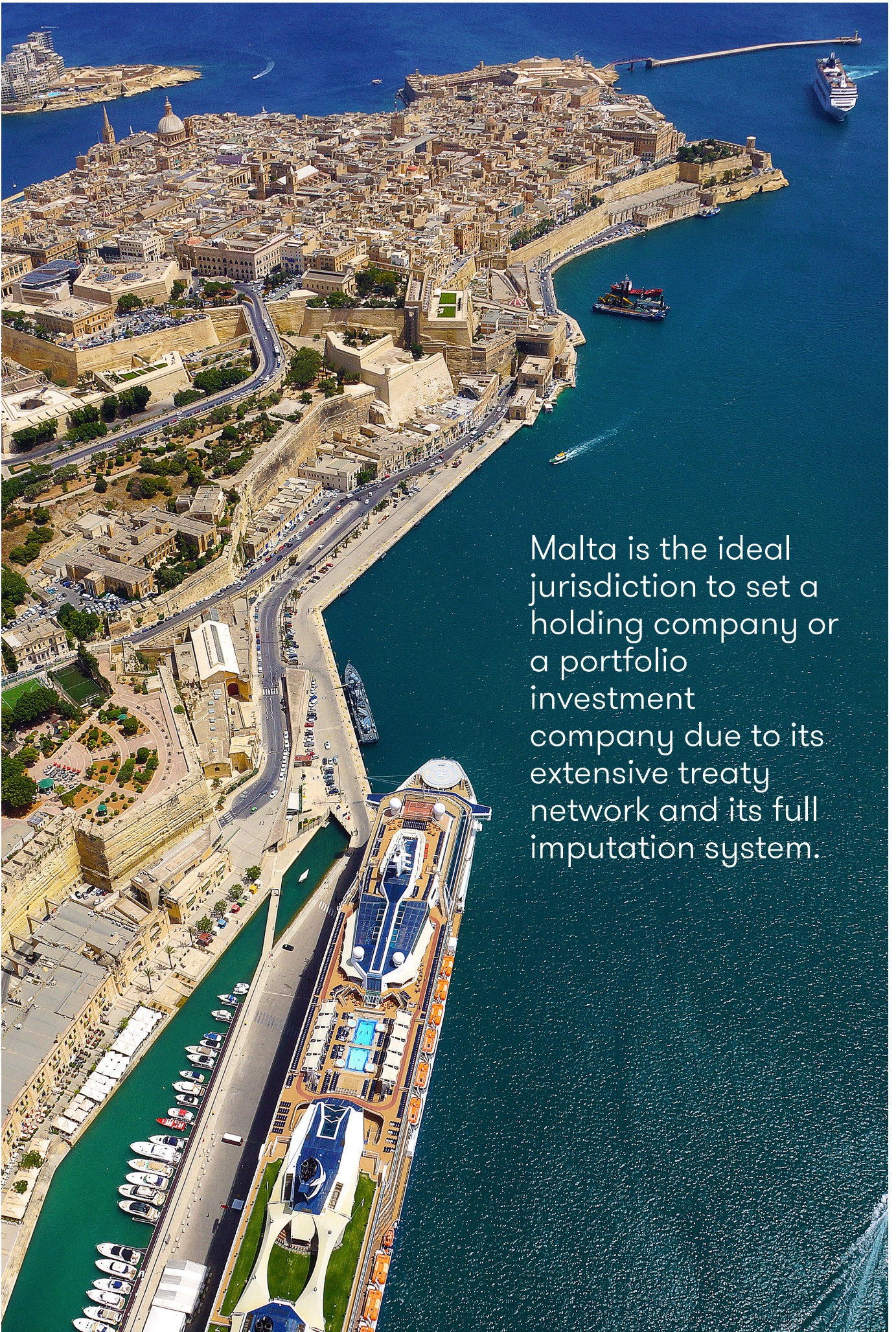
**Grant Thornton**

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# Participation exemption regime in Malta

May 2019





Malta is the ideal jurisdiction to set a holding company or a portfolio investment company due to its extensive treaty network and its full imputation system.

# Participation exemption regime

When a Maltese company acquires shares in another company it may be entitled to benefit from the participation exemption regime which exempts from tax any dividend income and capital gains derived from a participating holding provided that certain conditions are fulfilled.

In order to benefit from the said exemption, the Maltese company must hold an 'equity' investment ("Equity Holding") which qualifies as a 'participating holding'.

A participating holding means a holding which arises where:

- a) the company holds directly at least **5%** of the equity share capital of the investments, which holding confers an entitlement to at least **5%** of any two of the following rights:
  - i. a right to votes
  - ii. a right to profits available for distribution
  - iii. a right to assets upon a winding up of the investments
- b) the company is entitled at its option to call for and acquire the entire balance of the equity shares issued by the other company which are not held by it to the extent permitted by the law of the country in which the equity shares are held; or
- c) the company 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 the shareholder company; or
- d) the company 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) the investment held by the company represents a total value, as on the date on which it was acquired, of at least €1,164,000 or equivalent sum in foreign currency, and that holding in the investment is held for an uninterrupted period of not less than 183 days
- f) the company holds the shares for the furtherance of its own business and the holding is not held as trading stock for the purpose of a trade.

Furthermore, Equity investment is defined as a holding of the share capital in a company, incorporated in or outside Malta, which does not own or have any real right, directly or indirectly, in immovable property situated in Malta, and when the shareholding in the said company entitles the shareholder to at least any two of the following rights:

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

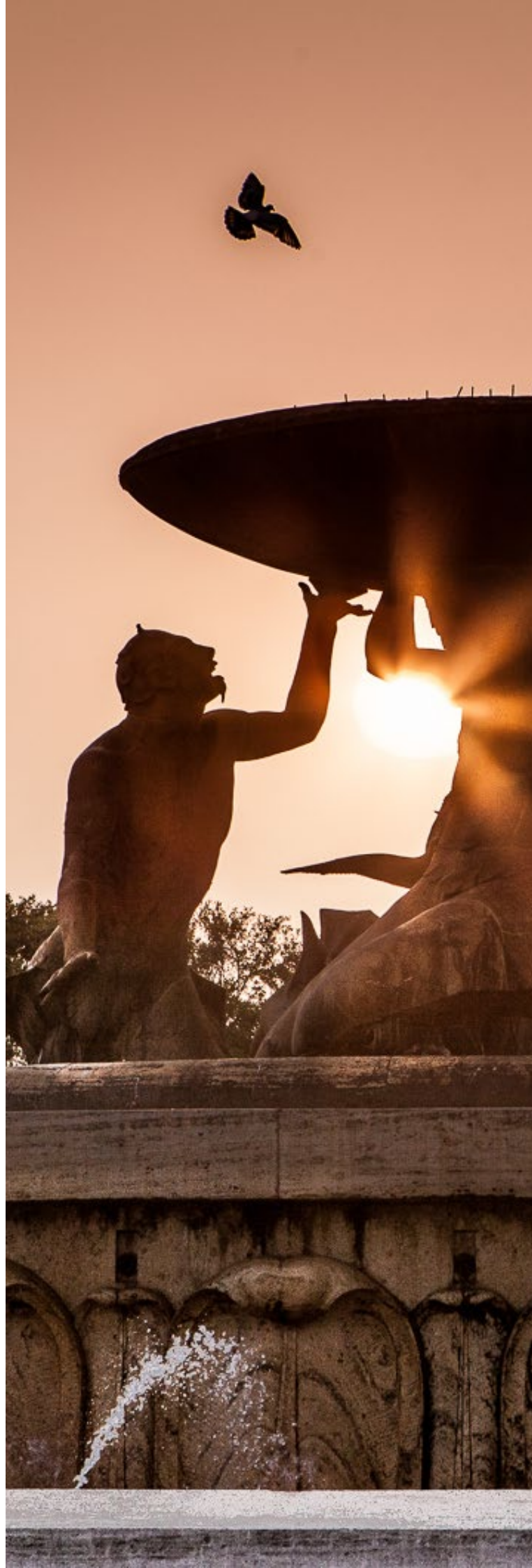
When a company registered in Malta derives any income or gains from the transfer of a participating holding, such income or gains would not be subject to tax in accordance with the Participation Exemption regime.

However, with respect to a dividend derived from a participating holding acquired on or after 1 January 2007 the exemption contemplated by this paragraph shall only apply when the conditions set out below are satisfied:

- a) the body of persons in which the participating holding is held, is resident or incorporated in a country or territory which forms part of the European Union; or
- b) the profits of the foreign entity are subject to any foreign tax of at least 15%; or
- c) the foreign entity does not have more than 50% of its income derived from passive interest or royalties; or
- d) the equity holding by the company registered in Malta in the body of persons not resident in Malta is not a portfolio investment; and
- e) 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%.

In addition, Malta has implemented into its domestic law the recent anti abuse clauses adopted by the EU council. In this regards, the participation exemption regime will be denied if the dividend paid is tax deductible in the hands of the subsidiary.

Furthermore, the participation exemption has been extended also to cater any income or gains derived by a permanent establishment (including a branch) of a Maltese entity where the PE is situated outside Malta, and to gains arising on the transfer of such PE.



## Exemption from duty on documents

Transfer of marketable securities held in a company are in principle subject to duty, chargeable at the rate of €2 on every €100 of the higher of the consideration received for the transfer or the market value of the marketable security. Furthermore, if it results that 75% or more of the assets of the company whose marketable securities are being transferred consists of immovable property (or any right over immovable property), the duty is increased to €5 for every €100.

However, when a company does not own immovable property located in Malta and is beneficially owned as to more than 50% by persons not resident in Malta and who are not owned and controlled by, directly or indirectly, nor act on behalf of any other individual or individuals, who are ordinarily resident and domiciled in Malta, such a company is eligible to submit a declaration in terms of the Duty on Documents and Transfers Act (DDTA), if more than 90% of the business interest of the said company is situated outside of Malta or more than half of the distributable profits of the company were allocated to the foreign income account in the last complete financial year of the company.

When the said declaration is approved by the Commissioner any subsequent transfer of shares of the company will be duty free.



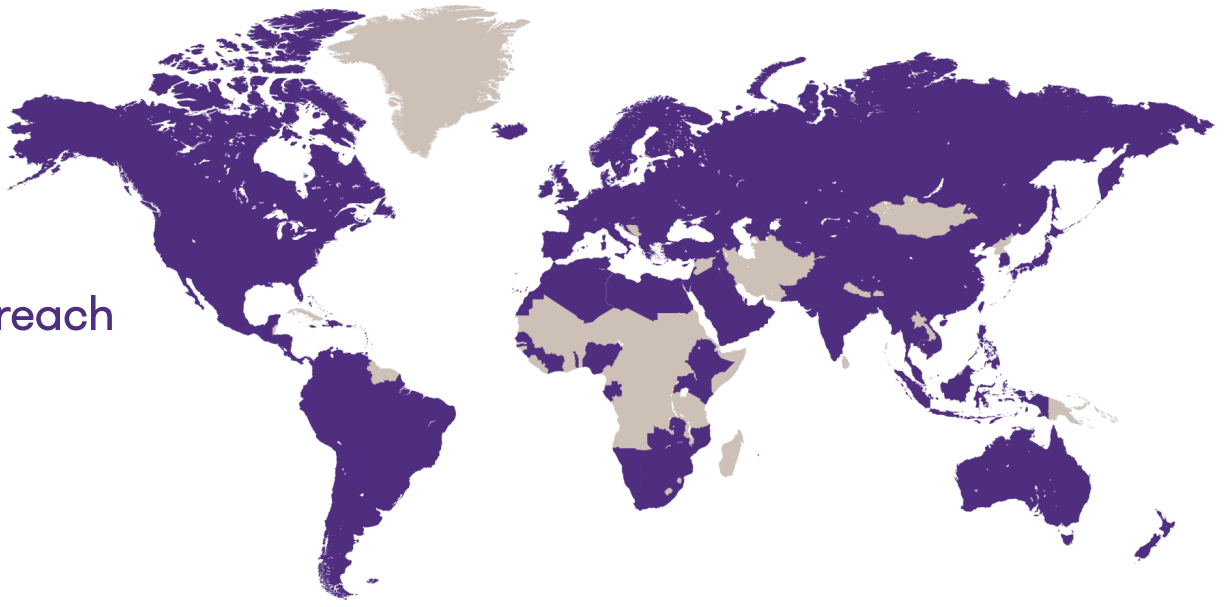
# Portfolio investments and the notional interest deduction

“Portfolio investment” is defined by the Income Tax Act as investment in securities such as shares, bonds, and such like instruments, held as one of many such investments for the purpose of investment by risk spreading where such an investment is not a strategic investment and is done with no intention of influencing the management of the company.

The holding and the management of a portfolio investment is regarded as a trading activity in Malta, and therefore any expenses incurred wholly and exclusively in the production of the income derived from the portfolio investment will be tax deductible.

In addition, Malta introduced the notional interest deduction provisions whereby a company or a permanent establishment of a foreign company resident in Malta is entitled to deduct from its chargeable income a deemed interest expense on the equity invested.

Income derived from such investments will be taxed in Malta, and subject to double taxation, unilateral or flat rate foreign tax credit relief where applicable. The shareholder is then entitled to claim the 6/7 or 2/3 tax refund upon the receipt of dividends.



## A global reach

### We discover what is important to you and make it important to us

Our culture is built on a genuine interest in our clients – their challenges, growth ambitions and wider commercial context. You get the attention you deserve from approachable, senior professionals who ask the right questions, listen and provide real insight and a clear point of view.

#### The bottom line

- A relationship-led approach with more time and attention from partners and senior advisers
- A deeper understanding of your business for more meaningful advice and recommendations.

### Agile and responsive service

Our size and structure creates advantages for you. We adopt a flatter structure, with shorter decision making chains, empowered teams and no complex chain of command. We have all the necessary processes and controls in a streamlined, efficient and responsive environment.

#### The bottom line

- A faster response when you need quick answers and clarity
- Anticipating the answers you will need before you ask.

### Pragmatic solutions to help you improve and grow

Our teams bring ideas to the table, going beyond the technical issues to recommend ways to make your business better. We balance a desire to do what's best for you in the future with an experienced sense of what is going to help you now.

#### The bottom line

- Helping you think ahead and think more broadly
- Proactively identifying opportunities for improvement and growth

### Collaborative teams with a different mindset

Our people are open, accessible and easy to work with. We work through the issues alongside you and challenge your ideas where necessary, whilst keeping an independent perspective. Our collaborative style also enables us to assemble teams across service lines, industries and geographies to tailor our capabilities to your requirements.

#### The bottom line

- Teams and solutions built around your needs not our structures
- A better working relationship with you and your team



US \$4.8bn  
(2016 revenue)



47,000+  
people



700+  
offices



130+  
countries



**Our distinctive  
client experience  
sets us apart**

## Key contact

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Austin joined the firm in 1982 and was initially mainly involved on audits in Malta. He later underwent training at the Milan office of the then Deloitte Haskins and Sells for 15 months following which he resumed his duties in the Malta office. He was admitted partner at Grant Thornton Malta in 1993 and is currently Head of Tax Services.

During the past 20 years Austin has taken up further studies and specialised in the local and international taxation and in the financial services sector.

Apart from being in charge of the local tax and VAT services, Austin is also responsible for services given to foreign owned companies setting up businesses in Malta and has provided tax advice to international clients involved in cross border business ventures.

Austin is a Fellow of The Chartered Association of Certified Accountants, a Fellow of the Malta Institute of Accountants and holds a Practising Certificate in Auditing. He is currently a member of the Tax Experts Group within Finance, as well as a member of the Direct Tax Committee of the Malta Institute of Accountants, and of the Council of the Institute of Financial Services Practitioners. Austin regularly attends tax conferences organized by Grant Thornton International, and is a customary speaker at local conferences related to VAT and tax matters, including those organised by the Malta Institute of Management and the Malta Institute of Accountants.

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