



TAX & CUSTOMS
ADMINISTRATION
MALTA

**Determination
in terms of Article 43(6)(f)
of the Income Tax Act**

Purpose of this Determination

This Determination is being made in accordance with the provisions of Article 43(6)(f) of the Income Tax Act, Cap. 123 of the Laws of Malta in order to establish cases where the provisions of Article 43(6) of the same Act do not apply.

Definitions

For the purposes of this Determination –

“Commissioner” means Commissioner for Tax and Customs;

“the Act” means the Income Tax Act, Cap. 123 of the Laws of Malta;

“public company or other entity” means a company or entity which has issued shares or other similar securities which securities are traded, or offered for trading, on the open market.

“Qualifying Stock Exchange” means any of the stock exchanges referred to in Section C of this Determination.

Commencement, Duration and Extent of Applicability

This Determination shall apply as from 1st January, 2007 and shall continue to apply until replaced or revoked.

This Determination does not preclude the Commissioner from issuing other Determinations (whether on a case by case basis or otherwise) in accordance with the provisions of Article 43(6)(f) of the Act where he is satisfied that the provisions of the said Article 43(6)(f) are satisfied.

Determination

The Commissioner is hereby issuing the following determination pursuant to the powers granted in terms of Article 43(6)(f) of the Act.

It is hereby determined by the Commissioner, for the purposes of article 43(6) of the Act, that where any interest is held by any individual ordinarily resident and domiciled in Malta which interest grants unto the said individual a direct or indirect entitlement to the profits of a public company or other entity, which satisfies all of the conditions listed in Section A or Section B below, where such public company or other entity is a direct or indirect shareholder in a company or entity referred to in article 43(6), any shares, or other similar

securities, issued by or on behalf of the said public company or other entity shall be considered to be widely held and frequently traded and such individual:

- i. shall be considered not to directly or indirectly own or control a substantial part of such public company or other entity; and
- ii. shall be considered not to be beneficially entitled to a substantial part of the profits or income of such public company or other entity; and

the provisions of article 43(6) of the Act shall have no application with regard to the said interest.

Requirements for applicability of this Determination to a particular case

This Determination shall only find application provided that the Commissioner has been duly notified through the submission of the notification form duly completed in all respects, either within 90 days from the date of issuance of this Determination, or prior to the date on which the provisions of Article 43(6) of the Act would have otherwise first found application with regard to that case, whichever is the later.

The notification form shall be signed and submitted by:

- i. an officer of the company registered for the purposes of article 48(4) or article 48(4A) of the Income Tax Management Act which is directly or indirectly owned, in whole or in part, by the public company or other entity in which an interest is, directly or indirectly, held by an individual ordinarily resident and domiciled in Malta which interest grants unto the said individual an entitlement to the profits of a company or entity referred to in article 43(6); or
- ii. an officer of the company registered in Malta with respect to which the direct shareholder referred to in (i) above is so registered for the purposes of article 48(4) or article 48(4A) of the Income Tax Management Act; or
- iii. a tax professional, as defined in item 1 of the Schedule to the Income Tax Act, expressly authorized, in writing, by the person referred to in (i) or (ii) above, to sign and submit the notification form on behalf of the said person (in which case a copy of the authorization shall be attached to the notification form);

and, in order to be complete, shall be supported by such documentation as may be appropriate.

The Commissioner shall, within 21 days from the date of receipt of the notification form, notify the applicant whether any further documentation is required in order for this determination

to apply. This procedure may be repeated unlimitedly until the Commissioner is satisfied with the documentation submitted and the integrity thereof. Should no such request (or additional request/s) be made by the Commissioner within the said time frame, this Determination shall, subject to the conditions, limitations and ongoing requirements provided for herein, be applicable without any further action being required, at that stage, on the part of the applicant and, subject only to the additional conditions imposed herein with regard to listing on the Malta Stock Exchange, without any further action or consent being required from the Commissioner.

Any failure to continue to satisfy the conditions necessary for the application of the Determination should be brought to the attention of the Commissioner by the person who, or on whose behalf, the notification form had been originally submitted or by a tax professional as referred to in (iii) above.

Furthermore any material changes to the relevant conditions as detailed in the notification form must be brought to the attention of the Commissioner, by the person who, or on whose behalf, the notification form had been originally submitted or by a tax professional as referred to in (iii) above, prior to the date on which the provisions of Article 43(6) of the Act would have otherwise found application with regard to that Basis Year in which the relevant change occurred. For the purposes of this paragraph a material change shall constitute a change which impacts the basis for qualification under this Determination.

In the case where there is an interest granting a direct or indirect entitlement to the profits of a company or other entity that has a primary listing on the Malta Stock Exchange in accordance with the Listing Rules issued by the Listing Authority under the Financial Markets Act, Cap. 345 of the Laws of Malta, this Determination shall only apply where the Commissioner, after submission to him of the attached form, has given his written consent to application of this determination in accordance with the provisions of Article 43(6)(f).

The provisions of Article 52 of the Income Tax Management Act, Cap. 372, are pertinent in the case of incorrect information which has a material effect on the applicability or otherwise of this Determination, unless it is proven that the provider of the information did not have any wilful intent to provide information which he knew to be incorrect and provided that all reasonable steps had been taken by the provider of the information so as to ensure the accuracy of the information provided.

Determination not to have effect on existing obligations to declare income

Nothing in this Determination shall exonerate any person from the obligation to declare in the annual tax return any income from shares or similar securities in the relevant public company or other entity and to be charged thereon where this is required in terms of the Income Tax Acts.

Section A.

A public company or other entity, is considered to have satisfied the conditions of this Section A where:

- i. any shares, or other similar securities, issued by or on behalf of the said public company or other entity, have been listed for trading on any of the exchanges listed in Section C;

AND

- ii. the said shares, or other similar securities, have been so listed for trading on, or prior to, the 31st of December 2006.

Section B.

A public company or other entity, is considered to have satisfied the conditions of this Section B where:

- i. any shares, or other similar securities, issued by or on behalf of the said public company or other entity, have been listed for trading on any of the exchanges listed in Section C;

AND

- ii. any one of the following three alternative conditions apply:

- a. The market capitalization of the said public company or other entity is equal to or exceeds EUR 1 billion;

OR

- b. The said public company or other entity is a constituent of the Standard and Poor's (S&P) Global 1200 Index;

OR

- c. no registration of an interest equal to or in excess of 5% of the total has at the end of the previous financial period of the relevant public company or other entity been made on the register of members, or other equivalent document, of the said public company or other entity, in favour of any person whose residence results, from the face of the said register or document (as it stands on the last day of the public company's or other entity's previous financial period), to be in Malta.

AND

- iii. in any of the cases listed in this Section B, no individual ordinarily resident and domiciled in Malta has declared to the said public company or other entity that he beneficially holds an interest of 5% or more in the said public company or other entity and the said public company or other entity, has not been notified of any such declaration having been made to the exchange on which any share, or other similar securities, in relation to the said public company or other entity, have been listed for trading and/or to any other regulatory or oversight authority or board.

Section C.

Qualifying Stock Exchanges:

The following stock exchanges are considered as recognised by the Commissioner and are those which are included in the Guidance Note on Recognised Stock Exchanges issued by the MTCA:

1. Stock exchanges that are included in the register of regulated markets within the European Economic Area maintained by the European Securities and Markets Authority (ESMA);¹
2. Stock exchanges that are members of the World Federation of Exchanges;¹
3. The New York Stock Exchange;¹
4. Stock exchanges in the United Kingdom recognised by the Commissioner.²

Note: Recognition under this Section C is for the purposes of this Determination only and confers no other status on the exchange concerned or basis for interpretation of any law. It does not constitute any form of recognition or approval for regulatory or other purposes nor does it provide any form of approval or recommendation of any of the investments which are listed or traded on that exchange.

¹ Refer to the [Guidance Note on Recognised Stock Exchanges](#) issued by the MTCA

² Refer to the [Guidance Note – Recognised Stock Exchange – United Kingdom](#) issued by the MTCA



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