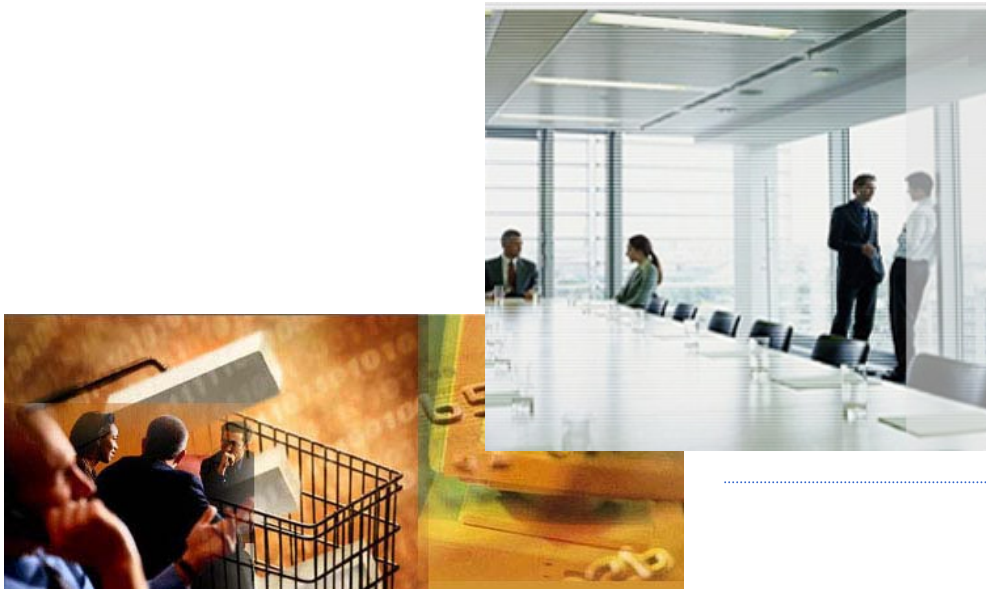


◆ **Spanish Company as Holding of a Maltese Licensing Company** ◆



**Tax Planning Solutions
2006**

BRAXTON CONSULTING

Spanish Company as Holding of a Maltese Licensing Company

Introduction

The purpose of this tax planning solution is to enjoy a low tax regime for income obtained by a licensing company (patents, trade marks, etc) and to distribute dividends to its parent company that benefits of the participation exemption regime.

Detailed steps

A group of companies owning intellectual or industrial property, as patents, trademarks, know-how, etc. needs to set up a licensing company as conduit for payments derived of these assets.

A Spanish Company (ETVE company) acts as holding company. A second holding company is set up in Malta, that in turn, establishes a Maltese licensing company, that makes the exploitation of the intangible assets' group.

Malta's standard corporate income tax rate is 35%. However, a foreign-owned Maltese holding company is entitled, on receipt of a dividend from its Maltese subsidiary, to a partial refund of Maltese tax paid by that subsidiary that amounts to a 30,83%. Thus, the taxes paid by the licensing company are recovered by the Maltese holding company. The total tax burden in Malta will be 4,17%.

Dividends distributed by the Maltese holding company to the Spanish Company will be tax-exempt in Malta, since there is not withholding tax on outward dividends from Malta.

In Spain, a resident company that receives dividends from a foreign subsidiary has two methods to avoid double taxation.

The first one is the tax-exemption, that applies when amongst other requirements, the foreign subsidiary is resident in a country that has undersigned a Double Tax Treaty with Spain with a change of information provision or is taxed at a similar level than the Spanish company. Due to the fact that Malta is currently considered as a tax haven and therefore it is included in the Spanish black list (although is a member of the European Union) it could be denied the application of the exemption method.

The second is the tax credit method by which the Spanish Company is entitled to deduct taxes paid by the tier of subsidiaries. This means, that it could be possible

to deduct taxes paid by the licensing company (35%) that is the second subsidiary. Thus, being the Spanish Corporate Tax rate in Spain a 35%, the result will be the exemption on the income obtained by the foreign subsidiary.

As a conclusion, the total tax burden paid for the management of intangible assets will be a 4,17%, that corresponds to the taxes paid in Malta. The dividends distribution to the Malta holding company, and the subsequent distribution of dividends to the Spanish holding will be tax exempt.

