

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2026

MODULE 2.07 – MALTA OPTION

SUGGESTED SOLUTIONS

PART AQuestion 1Explanation**Dividend – Baltic Green Energy SE**

The dividend income represents foreign source income remitted to Malta and thus, in principle, is subject to tax in Malta. Nevertheless, the participation exemption should find application as per the assessment which follows.

On the assumption that Baltic Green Energy SE is not a 'property company' as defined in article 2 of the Income Tax Act, EBE's holding of 12% of the shares in Baltic Green Energy SE should qualify as a Participating Holding as defined in article 2 of the Income Tax Act insofar as the 12% holding grants EBE at least 2 of 3 equity rights (namely right to vote, right to profits available for distribution and right to assets available on a winding up).

In addition, by virtue of Baltic Green Energy SE's incorporation in Estonia, a country within the European Union, one of the anti-abuse provisions required for the application of the participation exemption is satisfied.

Furthermore, as the dividend income is tax exempt but not deductible in Estonia, no prohibition on the application of the participation exemption will apply.

Gain on disposal of shares - Norwegian Co.

The gain on disposal of shares in the Norwegian Company is outside scope of Maltese income tax since EBE is resident but not domiciled in Malta and thus foreign source capital gains are outside scope of Maltese income tax, even if remitted to Malta.

Royalty Income

The royalty income from the German subsidiary is subject to tax in Malta because it is received in Malta.

Dutch PE Income

The trading income attributable to the Dutch PE is outside scope of Malta tax as it represents foreign source income not remitted to Malta.

Rental Income – Warehouse in Romania

The rental income from a warehouse in Romania represents foreign source rental income not remitted to Malta, thus outside scope of Malta tax.

Computation

	<u>Final Tax</u> <u>Account</u>	<u>Immovable</u> <u>Property</u> <u>Account</u>	<u>Foreign</u> <u>Income</u> <u>Account</u>	<u>Maltese</u> <u>Taxed</u> <u>Account</u>	<u>Untaxed</u> <u>Account</u>
Dividend - Baltic Green Energy SE					180,000
Gain on disposal of shares - Norwegian Co.					90,000
Royalty Income			260,000		
Dutch PE Income					400,000
Rental Income - Warehouse in Romania					90,000
Salaries					(240,000)
Rent					(50,000)
IP Amortisation			(60,000)		
Interest on bank loan					(35,000)
Legal fees					(25,000)
Capital allowances					(45,000)
Dutch municipal taxes					(28,000)
FRFTC Gross-up			65,000		
Chargeable Income	-	-	265,000	-	337,000
Tax at 35%	-	-	92,750	-	-
FRFTC			(65,000)		
Malta tax payable	-	-	27,750	-	-

Question 2Explanation

The consulting income is Malta source income as the work is performed by Ms. Venture from Malta and is therefore taxable in Malta.

Dividend income from a Spanish Company constitutes foreign source income, which is taxable in Malta because it is received in Malta.

The bank interest from Gibraltar is foreign source income which is not taxable in Malta since it not received in, nor remitted to Malta.

The gain on disposal of cryptocurrency is not subject to tax in Malta as it represents foreign source capital gains.

Note: It is assumed that the gain did not arise in the context of a trade and the cryptocurrency does not have the features of a security.

The rental income from an apartment in Sliema (Malta) constitutes Malta source income and is therefore subject to tax in Malta. Ms. Venture has the option to apply the 15% final tax on the gross rental income or subject the income to tax at her marginal rates and claim the available deductions. In this case, there are no known expenses (such that the only available deduction would be the statutory allowance of 20%), and therefore the 15% final tax is more beneficial.

The UK occupational pension represents foreign source income and is not taxable in Malta since it is not received in, nor remitted to Malta.

The royalty income is taxable in Malta because it is paid into Ms. Venture's Maltese bank account and is thus received in Malta.

The profits from trading in foreign shares constitute Malta source income since Ms. Venture is resident in Malta. Therefore, the income is subject to tax in Malta even though it is not remitted to or received in Malta.

Interest income from Malta Government Stocks constitutes Malta source income and therefore is taxable in Malta. Ms. Venture has the option to apply the 15% final tax on the gross interest income, or to subject the income to tax at her marginal rates. In this case, the 15% final tax is more beneficial.

The lump-sum compensation for the surrender of tenancy rights constitutes Malta source income and is therefore taxable in Malta. In this case, the surrender of tenancy rights represents income from the transfer of a right over immovable property situated in Malta and therefore subject to a final tax of 8% on the transfer value in terms of article 5A of the Income Tax Act.

Computation of chargeable income

	€
Consulting Fees	220,000
Dividend income (Spanish company)	80,000
Bank Interest from Gibraltar	-
Gains from disposal of Cryptocurrency	-
Rental income (Sliema Property)	50,000
UK Occupational Pension	-
Royalty income	14,000
Trading in Foreign Shares	20,000
Interest income from Maltese Government Stocks	9,000
Compensation for surrender of tenancy rights over a Maltese office	30,000
Chargeable income	423,000
Less income subject to a final tax:	
Rental income (Sliema Property)	(50,000)
Interest income from Maltese Government Stocks	(9,000)
Compensation for surrender of tenancy rights over a Maltese office	(30,000)
Chargeable income tax at applicable resident progressive tax rates	334,000
Chargeable income subject to a final tax of 15%	59,000
Chargeable income subject to a final tax of 8%	30,000

PART B

Question 3

As AGG is not conducting a trade, the transfer of the intra-group loans receivable represents a transfer of a capital asset. Article 5(1) of the Income Tax Act provides for an exhaustive list of chargeable assets, and debt instruments are not one of these chargeable assets. As a result, the transfer of the intra-group loans receivable to AGG Capital AG is not expected to give rise to any Malta income tax implications.

The dividend income from AGG Finance Ltd is, in principle, subject to income tax in Malta in the hands of AGG; however, the participation exemption may apply on the following basis:

- AGG Finance Ltd is a wholly owned subsidiary of AGG. Therefore, it is understood that AGG's holding in AGG Finance Ltd grants it at least the required 2 out of 3 equity rights (right to vote, profits available for distribution, and assets available for distribution on a winding up);
- One of the anti-abuse provisions are satisfied as AGG Finance Ltd is incorporated in Ireland, a country forming part of the European Union; and
- No deduction is claimed by AGG Finance Ltd for the amount distributed, such that no restriction on the ability to claim the participation exemption should arise.

The transfer of shares in AGG Italia SRL constitutes the transfer of a chargeable assets in terms of article 5(1) of the Income Tax Act. Therefore the transfer is, in principle, subject to income tax.

Nevertheless, the transfer from AGG to AGG Capital AG, a wholly owned subsidiary of AGG, should fall within the scope of the intra-group exemption contemplated in article 5(9) of the Income Tax Act. Therefore, no Malta income tax implications are expected to arise.

While on the merger of AGG Italia SRL into AGG Capital AG itself no Malta income tax implications are expected to arise, when assessing the applicability of the Controlled Foreign Company (CFC) rule, the activities previously undertaken by AGG Italia SRL but subsequently carried out by AGG Capital AG following the merger would also be taken into consideration.

Upon the redomiciliation to Malta, AGG Caribbean Holdings Limited will be treated as a company incorporated in Malta, and thus also resident in Malta for tax purposes by reference to its incorporation in Malta. As a result, AGG Caribbean Holdings Limited will be subject to tax in Malta on its worldwide income and capital gains.

AGG Caribbean Holdings Limited may also, at its option and by notice in writing to the Commissioner within 1 year from the redomiciliation, elect for the assets it held at the time of the redomiciliation to be treated as assets acquired on the date of the redomiciliation and the market value on such date would be deemed to constitute the cost of the assets in question.

The merger of AGG Caribbean Holdings Limited into AGG is not, of itself, expected to trigger Malta income tax implications.

The liquidation of AGG Properties Ltd will give rise to a distribution of any profits available for distribution at the time of the liquidation and the transfer of assets held by AGG Properties Limited at the time of the liquidation.

On the distribution of profits by AGG Properties Ltd, no further Malta tax implications should arise in the hands of AGG through the functioning of Malta's full imputation system. In addition, as a company resident in Malta, AGG does not qualify as a recipient in terms of article 61 of the Income Tax Act, such that any distribution out of the Untaxed Account should not be subject to a withholding tax of 15%.

Furthermore, on a distribution of taxed profits allocated to the Maltese Taxed Account and the Foreign Income Account of AGG Properties Ltd, AGG may be entitled to claim a refund in terms of Articles 48(4) and 48(4A) of the Income Tax Management Act.

The transfer of the immovable property constitutes a transfer of capital assets in terms of Article 5(1) of the Income Tax Act. However, the transfer of the immovable property from AGG Properties Limited to its parent company AGG should fall within the scope of the intra-group exemption contemplated in article 5(9) of the Income Tax Act. Therefore, no Malta income tax implications are expected to arise.

As AGG is not conducting a trade, the transfer of the intra-group loans receivable represents a transfer of a capital asset. Article 5(1) of the Income Tax Act provides for an exhaustive list of chargeable assets, however profit-

participating loans are not one of these chargeable assets. As a result, the assignment of the profit-participating loans to its shareholder is not expected to give rise to any Malta income tax implications.

The assignment of an Article 48(4A) ITMA refund does not represent the transfer of a chargeable asset contemplated in article 5(1) of the Income Tax Act and therefore no Malta income tax implications are expected to arise.

The transfer of usufruct rights over AGG's Maltese office block to its shareholder is subject to a final tax on the transfer value in terms of the property transfers tax contemplated in article 5A of the Income Tax Act.

In respect of any potentially applicable deferrals and/or exemptions, please note the following:

- The intra-group exemption contemplated in article 5A(4)(f) of the Income Tax Act does not find application as the transferee in this case is an individual and this exemption is, subject to ownership requirements, applicable only to transfers between two companies;
- The transfer is not being undertaken in the course of a winding up or in the course of a distribution of assets pursuant to a scheme of distribution such that the exemption contemplated in article 5A(f)(j) of the Income Tax Act does not find application; and
- It is understood that the property being transferred is not being replaced within 1 year by new property to be used solely for a similar purpose of the business, such that the exclusion from the property transfers regime contemplated in article 5A(3)(g) does not apply, and consequently, the roll-over relief contemplated in article 5(8) of the Income Tax Act does not apply.

On the redomiciliation, AGG may be subject to exit taxation on capital gains calculated with reference to the market value of the transferred assets less their value for tax purposes.

The exit tax would be due by the tax return date; however, since AGG is redomiciling to the Netherlands (i.e. another EU Member State), AGG would have the option to pay the exit tax by the tax return date or to spread the payment over 5 years.

Question 4Annual value of the Fringe Benefit for the use of vehicles

The use of the passenger car by the Senior Sales Manager represents a Fringe Benefit under Rule 9 of the Fringe Benefit Rules; however, the use of the van by the technical employee does not.

The annual value of the Fringe Benefit for the use of the passenger car by the Senior Sales Manager is as follows:

$$\begin{aligned} & (\text{Vehicle use value} + \text{maintenance value} + \text{fuel value}) * \text{private use percentage} \\ & (34,000 * 17\% + 34,000 * 5\% + 34,000 * 5\%) * 55\% \\ & (5,780 + 1,700 + 1,700) * 55\% = \text{EUR } 5,049 \end{aligned}$$

Annual value of the Fringe Benefit for the provision of accommodation

The provision of the apartment owned by BlueWave to its engineer is a Fringe Benefit to be calculated on the higher of cost and market value. In this case, the market value is higher and will be used in determining the value of the Fringe Benefit.

The annual value of the Fringe Benefit for the provision of accommodation to the engineer is 5% of the market value of the apartment:

$$\begin{aligned} & \text{Market Value of apartment} * 5\% \times 7/12 \text{ months} \\ & 480,000 * 5\% \times 7/12 = \text{EUR } 14,000 \end{aligned}$$

Annual value of the Fringe Benefit of beneficial loan arrangements

The provision of loans to employees at beneficial rates represents a taxable fringe benefit.

In the case at hand, the provision of a beneficial loan arrangement to the technical employee is a Fringe Benefit to be determined with reference to the excess of the interest which would have been payable at the Benchmark Rate over the interest actually paid. The value of the benefit is:

$$\begin{aligned} & \text{Interest at Benchmark Rate} - \text{Interest at Beneficial Rate} \\ & (200,000 * 3.2\%) - (200,000 * 1.5\%) \\ & 6,400 - 3,000 = \text{EUR } 3,400 \end{aligned}$$

On the other hand, loans to shareholders holding more than 25% in the capital and voting rights do not fall within the scope of the Fringe Benefit rules and therefore the chargeable fringe benefits value is nil.

Share Awards and Tax thereon

The acquisition of shares by an employee under a share option or share award scheme is a Fringe Benefit. The value of the Fringe Benefit is to be determined by the value of the shares less the amount actually paid for these shares as follows:

$$\begin{aligned} & \text{Value of shares acquired} - \text{Amount paid for the shares} \\ & (600 \text{ shares} * 12) - (600 \text{ shares} * 5) \\ & 7,200 - 3,000 = \text{EUR } 4,200 \end{aligned}$$

$$\begin{aligned} & \text{The tax on the Fringe Benefit on Share Awards is calculated at a flat rate of 15\%:} \\ & (\text{Value of Fringe Benefit} * 15\%) \\ & \text{EUR } 4,200 * 15\% = \text{EUR } 630 \end{aligned}$$

Comment on whether reimbursements constitute taxable fringe benefits

The Fringe Benefit Rules seek to bring to charge the value of a benefit or benefits provided by reason of employment or office to an individual such that apart from the basic salary/remuneration, the full value obtained through such employment or office is brought to charge.

The manner in which the payment is made is not relevant in determining whether a Fringe Benefit arises or not and therefore, reimbursements may constitute taxable Fringe Benefits and the merits of each case would need to be taken into account.

Typically, where an employer reimburses an employee or officer for expenses which are of a private nature and which were not incurred by such employee or officer for the benefit of the employer, such reimbursement is expected to represent a taxable Fringe Benefit unless it is specifically excluded in rule 39(2) of the Fringe Benefit Rules.

PART C

Question 5

The implementation of ATAD II resulted in the introduction of anti-hybrid mismatch rules in Malta with effect from 1 January 2020, expanded further with effect from 1 January 2022 to cover reverse hybrid mismatches.

These anti-hybrid mismatch rules seek to counter instances where a deduction without inclusion outcome or a double deduction outcome arise, through the denial of deductions or the inclusion of income for Malta tax purposes such that the respective deduction without inclusion outcome or the double deduction outcome, as the case may be, is neutralized.

The reverse hybrid mismatch rules seek to treat a hybrid entity that is incorporated or established in Malta but owned to the extent of 50% or more (voting rights, capital interest or right to a share of profit) by one or more associated non-resident entities, as a resident of Malta and taxed on its income in Malta if the jurisdictions of the aforementioned associated non-resident entities regard the hybrid entity as an opaque person.

Historically, the tax treatment in Malta would typically not have been impacted by the tax implications in another jurisdiction. However, it is worth noting that as from 1 January 2016, the application of the participation exemption in terms of article 12(1)(u)(1) of the Income Tax Act on dividend income from a holding in another EU Member State had introduced a similar concept. In that instance, where the dividend income was exempt from withholding tax under the Parent-Subsidiary directive, the participation exemption could only be claimed insofar as the distribution of such profits does not constitute a deductible expense in the hands of the distributing company.

However, with the enactment of the ATAD II provisions, the Maltese tax system mandates a compulsory assessment of the tax treatment of various income and expenses in the other jurisdictions involved in the transaction, as the Malta tax treatment will vary depending on the foreign tax considerations.

Therefore, it may be argued that the introduction of ATAD II provisions had the impact of eroding part of Malta's fiscal autonomy in specific situations arising from hybrid mismatches.

Question 6Eligible Risk Capital

	€
Issue Share Capital	12,000,000
Share Premium	3,000,000
Positive Retained Earnings	4,500,000
Non-Interest-bearing shareholder loan	1,000,000
Capital contribution	500,000
Translation reserve	-
Less:	
Interest-free loans granted to subsidiary	(2,000,000)
Partnership interests	(1,200,000)
Risk Capital	17,800,000

NID computation

	€
Risk Capital	17,800,000
Reference Rate	7.05%
NID	1,254,900
Maximum NID	
Chargeable Income	3,400,000
90% Limitation	3,060,000
NID Available	1,254,900
Maximum NID claimable	1,254,900
NID carry-forward	
NID generated for the year	1,254,900
Utilised	(1,254,900)
NID carry-forward	-

Tax Account Allocations

	€
Chargeable income before NID	3,400,000
NID claimed	(1,254,900)
Chargeable income after NID	2,145,100
Tax Rate	35%
Tax	€750,785

Primary Allocation

	<u>FTA €</u>	<u>MTA €</u>
Gross amount	1,254,900	2,145,100
Tax	-	(750,785)
Net amount	1,254,900	1,394,315
Secondary Allocation - 10% Reallocation		
Gross amount	193,062	(193,062)
Tax	(67,572)	67,572
Net amount	125,490	(125,490)
Final Allocation		
Gross amount	1,447,962	1,952,038
Tax	(67,572)	(683,213)
Net amount	1,380,390	1,268,825

Consequence for direct and indirect shareholders

The amount of Notional Interest Deduction claimed for the year by Vertex Capital Ltd will represent deemed interest income in the hands of Vertex Holding Ltd.

Vertex Holding Ltd will be subject to tax on that deemed interest income; however, insofar as it has sufficient risk capital, it may claim a NID against this deemed interest income. Where this option is availed of, the 90% limitation will not find application and NID may be claimed against the deemed interest income in full.

Where Vertex Holding Ltd has itself claimed NID, Mr. Vertex as its shareholder will also be in receipt of deemed interest income. This interest (being Malta source income) is, in principle, subject to tax in Malta. However, Mr. Vertex may claim the exemption applicable to non-residents contemplated in article 12(1)(c)(ii) of the Income Tax Act on the deemed interest income.

Question 7

<u>Supply</u>	<u>VAT Treatment</u>
Removal of malignant skin lesions	Exempt without credit
Non-surgical cosmetic treatments	Taxable
Laser treatment	Exempt without credit
Counselling sessions	Exempt without credit
Laser hair removal	Exempt without credit
Issuing of a medical certificate requested by an employer to assess an employee's fitness for duty	Taxable
Rhinoplasty	Taxable

In order to qualify as “medical care”, a service shall be undertaken to protect, maintain and restore, as the case may be, human health. This is understood to include the prevention, diagnosis, treatment and cure of diseases and/or health disorders but does not extend to services and/or procedures of a cosmetic nature without an underlying diagnosis.

Therefore, the services which qualify as “medical care” are the following:

- Removal of malignant skin lesions
- Laser treatment
- Counselling sessions
- Laser hair removal

The VAT exemption in item 11(1) of Part Two of the Fifth Schedule to the Value Added Tax Act covers medical care provided by a person in the exercise of any profession which is regulated under the Health Care Professions Act (Cap. 464), the Psychology Profession Act (Cap. 471), the Counselling Profession Act (Cap. 538) and the Psychotherapy Profession Act (Cap. 587). Item 11(2) covers hospital and medical care undertaken by a hospital, institution or centre for medical treatment which is specifically approved by the Minister.

Therefore, the exemptions contemplated in Item 11(1) and Item 11(2) are also dependent on the status of the service provider.

Aesthetic/cosmetic services may qualify for the exemptions in Item 11(1) and Item 11(2) if there is an underlying medical justification such that the service qualifies as “medical care”.

In applying the exemption, the medical professional and/or clinic must document the medical justification for applying exemption.

Question 8

The final property transfers tax rate of 5% on the transfer value of a property is applicable where the property is being transferred within 5 years of acquisition and:

- it neither forms part of a project nor formed part of a project of a person related to the transferor during the previous 5 years; and
- during the said five-year period, the transferor did not perform any works in respect of which a development permission was required in terms of the Development Planning Act (excluding any works for which a permission is granted without the need for an application).

Given that this property required development permission, the 5% rate does not apply, in which case the default 8% property transfers tax rate should apply.

Article 5A(3)(h) provides for an exclusion out of the Property Transfers Tax regime for a person who is not resident in Malta and who can produce a statement by the tax authorities of the country of residence of that person confirming that that person is subject to tax in their country of residence on the gains or profits from the transfer of the immovable property situated in Malta.

However, for this exclusion to apply, the non-resident must also not be owned or controlled by, directly or indirectly, nor act on behalf of an individual or individuals who are resident in Malta.

Therefore, in this scenario, the Article 5A(3)(h) exclusion cannot be applied since the non-resident person is controlled by a person resident in Malta. Accordingly, the transfer of the immovable property situated in Malta will be subject to tax in terms of the Property Transfers Tax regime in Article 5A of the Income Tax Act.

By default, the transfer of immoveable property situated in Malta or any real right thereon fall within the purview of article 5A of the Income Tax Act.

Where article 5A is applicable and no exclusion applies, Article 5 cannot be applied. Under article 5A, tax is levied on the transfer value of the property, irrespective of the actual gain or loss derived, except for a slightly different methodology applied for certain transfers of immovable property acquired causa mortis (i.e. by inheritance) or by donation, with limited scope for deduction of expenses incurred. In addition, the tax paid is a final tax which is not included in the chargeable income of the person effecting the transfer, and is not taxed at the statutory rates applicable to such person (i.e. progressive rates for individuals and 35% for companies). Where the transferor is a company, on a subsequent distribution of such profits, the shareholder will not be entitled to claim any imputation tax refund on the property transfers tax incurred in terms of Article 5A.

On the other hand, where Article 5 applies, the Income Tax Act and the Capital Gains Rules prescribe a specific methodology for determining the gain for tax purposes, and includes a wider array of deductions which may be claimed. The resultant gain forms part of the person's chargeable income and is subject to tax at the prescribed rates for such person. Furthermore, where the transferor is a company, on an eventual distribution of profits, an imputation tax refund may in principle be claimed.

In terms of article 5A(5)(b), a final tax of 12% on the excess of the transfer value over its acquisition value is applicable where the property was inherited after 24 November 1992.

The exclusion from the 12 % final tax on the gain discussed above is only applicable in respect of properties forming part of a project acquired through a donation, and therefore the provisions of Article 5A(5)(b) will find application.