

Answer-to-Question-_1_

Since EBE is legally domiciled in Luxembourg but is effectively managed and controlled in Malta, EBE is resident but not domiciled in Malta, and is therefore subject to tax in Malta on a source and remittance basis of taxation.

Income

EUR180,000 dividend income

Dividend income is foreign-sourced and remitted to Malta, and is therefore subject to tax in Malta. Given that the dividend was exempt from tax in Estonia, no issues regarding double taxation arise. Having said that, assuming that the shares held by EBE in Baltic Green Energy SE ('Baltic') are equity shares, EBE's holding qualifies as a participating holding on the following bases:

- EBE's shareholding exceeds 5% of the shares of Baltic.
- Baltic is a company registered in Estonia, thereby satisfying the primary anti-abuse condition.
- The above is applicable on the assumption that EBE and Baltic do not fall within the scope of the Parent Subsidiary Directive or, if they do, the profits being distributed by Baltic are not allowable as deductions at the level of the participating holding in Estonia.

In light of the above, EBE may claim the participation exemption in terms of Article 12(1)(u)(1) of the Income Tax Act ('ITA'). Therefore, the dividend income stands to be allocated to the Untaxed Account of EBE.

EUR900,000 gain on disposal

Given that the gain on disposal is a foreign-sourced capital gain, it is not subject to tax in Malta on a remittance basis of taxation, even if it had been remitted to Malta rather than Luxembourg.

EUR260,000 royalty income

This is foreign-sourced income remitted to Malta, and is therefore subject to tax in Malta. Given that no foreign tax was paid on this royalty income, there is no scope for claiming FRFTC thereon.

On the understanding that the royalty income is passive in nature, it shall be taxed in terms of Article 4(1)(e) of the ITA at the standard corporate tax rate of 35% (after deducting any related allowable deductions). The net-of-tax figure stands to be allocated to the Foreign Income Account ('FIA') since it is foreign-sourced passive income.

EUR400,000 trading income

Despite this income being foreign-sourced and not remitted to Malta, given that it is attributable to EBE's PE in the Netherlands (where a portion of its employees is based), such income would be subject to tax both at the level of the PE as well as at the level of EBE. Having said this, FRFTC may be claimed in Malta, calculated at a flat rate of 25% of the gross amount of the income, after deducting municipal taxes in the Netherlands of EUR28,000, but before deducting any attributable deductible expenses. Correspondingly, the income (net of tax, FRFTC relief, and any attributable deductible expenses), stands to be allocated to the FIA.

EUR90,000 rental income

This income is foreign-sourced but was remitted to Luxembourg not Malta. Therefore, such income is not subject to tax in Malta on a remittance basis of taxation.

Expenses

Salaries

The 50% portion that is attributable to the Netherlands PE, amounting to EUR120,000, is allowable as a deduction against the EUR400,000 trading income mentioned above. The other 50% portion attributable to the Maltese head office is allowable as a deduction by EBE since it is

wholly and exclusively incurred in the production of EBE's income.

Rent

The EUR10,000 rent related to the Valletta office is deductible since it is wholly and exclusively incurred in the production of EBE's income. The remaining EUR40,000 related to the Netherlands PE is allowable as a deduction against the EUR400,000 trading income mentioned above).

IP amortisation

Since the EUR60,000 was incurred in relation to the software licensed to the German subsidiary, such expense is deductible against the royalty income derived from licensing such software since it was incurred in producing the said royalty income.

Interest

This is allowable as a deduction against the EUR400,000 trading income mentioned above since the borrowing costs were incurred for the production of the Netherlands PE's income, in terms of Article 14(1)(a) of the ITA.

Legal fees

This is deductible by EBE since it was incurred wholly and exclusively in the production of the income, in terms of Article 14 of the ITA.

Wear and tear

The EUR10,000 related to the Malta head office is deductible by EBE since it was wholly and exclusively incurred in the production of the income. However, since EBE does not have any trading income against which such allowances can be set off, these will remain unutilised and will be carried forward to the following year until they can be set off against the income to which they relate.

The EUR35,000 related to the Netherlands PE's assets is allowable as a deduction against the EUR400,000 trading income mentioned above.

Tax Computation

	<u>EUR</u>
EBE trading income	-
Less salaries	(120,000)
Less rental expense	(10,000)
Less legal fees	<u>(25,000)</u>
Tax loss	(155,000)
Amount allocated to MTA	(155,000)

PE trading income	400,000
Less foreign taxes	(28,000)
	372,000
Optimal FRFTC	71,995
(0.4235 x (400,000 - 230,000))	
Grossed up amount	443,995
Less deductible expenses	(230,000)
	213,995
Tax at 35%	74,898
Less FRFTC	<u>(71,995)</u>
Tax after FRFTC	2,903
Amount allocated to FIA	211,092

Royalty income	260,000
Less IP amortisation	(60,000)
	<u>200,000</u>
Tax at 35%	70,000
Amount allocated to FIA	130,000

Answer-to-Question-__2__

Laura is ordinarily resident but not domiciled in Malta and therefore, she is subject to tax in Malta on a source and remittance basis of taxation. The applicable progressive rates of taxation would depend on Laura's circumstances (single, married, or parent rates).

Maltese chargeable income

Taxed at applicable progressive rates

Consulting fees	-
Dividend income	80,000
Interest income	-
Gains from disposal	-
Rental income	50,000
Pension income	-
Total chargeable income	130,000

Taxed at final tax of 15% (assuming Laura does not elect to opt out of the investment income provisions)

Interest income 9,000

Taxed at final tax of 8% in terms of Article 5A of the ITA (assuming conditions required for any of the other final tax rates to apply are not satisfied)

Lump sum compensation 30,000

Given that Laura is ordinarily resident but not domiciled in Malta, and she derives foreign-sourced income in excess of EUR35,000, she is subject to a minimum tax of EUR5,000 per annum in terms of Article 56(27) of the ITA.

Explanation

Number 1

Trading income is deemed to arise where the activities giving rise to such income are physically carried out. Since the consulting work was performed from Malta, such income is deemed to be sourced in Malta, despite having been carried out for UK clients and being remitted to a UK bank account. In view of this, the consulting income of EUR220,000 is subject to tax in Malta at the applicable progressive rates of taxation.

Number 2

The dividend income is foreign-sourced but remitted to Malta, and is

therefore subject to tax in Malta on a remittance basis of taxation at the applicable progressive rates of taxation.

Number 3

The interest income is foreign-sourced and was not received in Malta and therefore, such income is not subject to tax in Malta on a remittance basis of taxation.

Number 4

The gains from disposal comprise a capital gain. Given that such capital gain is sourced in the US, it is not subject to tax in Malta on a remittance basis of taxation, even if it had been remitted to / received in Malta (which is not the case here).

Number 5

This is Maltese-sourced rental income and is therefore subject to tax at the applicable progressive rates of taxation.

Number 6

This pension income is foreign-sourced and is not remitted to Malta, hence rendering it not subject to tax in Malta on a remittance basis of taxation. Had it been subject to tax in Malta, Laura may have been eligible for a tax credit of 25% (capped at EUR750) in respect of such pension income under the Voluntary Occupational Pension Scheme, assuming that all the applicable conditions would have been satisfied.

Number 7

The royalty income is being remitted to Malta as a result of being paid into a Maltese bank account, and is therefore subject to tax in Malta at the applicable progressive rates of taxation.

Number 8

This is foreign-sourced trading income that is not remitted to Malta and therefore, it is not subject to tax in Malta on a remittance basis of

taxation.

Number 9

This interest income is sourced, and therefore taxable, in Malta. Given that interest income from Maltese government stocks qualifies as investment income in terms of Article 41(a)(ii) of the ITA, and Laura qualifies as a recipient in terms of Article 41(c)(i) (since she is a Maltese resident), such interest income would be subject to a final withholding tax rate of 15% and therefore, Laura will not have to declare the income in her income tax return since no further tax would be payable thereon.

This is unless Laura elects to opt out of the investment income provisions and instead receive the gross amount of interest income (without any tax being withheld by the Maltese government, as the payor). In the latter case, Laura would have to declare such interest income in her income tax return, and it will be taxed at the applicable progressive rates of taxation.

Number 10

Such compensation constitutes income of a capital nature from the cession of tenancy rights over immovable property situated in Malta. Therefore, this would be taxable in terms of Article 5A of the ITA.

Article 5A applies the property transfer tax system, whereby a final tax rate is applied to the transfer value of the immovable property (or any right over such property), which is equivalent to the higher of their market value and the consideration received. In view of this, the compensation of EUR30,000 received by Laura will be subject to tax in terms of Article 5A at the general final tax rate of 8% (assuming that the conditions required to apply any of the other final tax rates are not satisfied).

Number 1

Passenger car

The passenger car is kept overnight outside of the employer's premises and is used both privately and for work. Hence, the private use of the car provided by the employer constitutes a Category 1 fringe benefit, whereby the value of the fringe benefit is determined using the below formula:

Annual taxable fringe benefit value = (Vehicle Use Value + Maintenance Value + Fuel Value) x Private Use Percentage ('PUP')

Car was acquired in 2023 - not older than 6 years.

Therefore, Vehicle Use Value = $10\% \times \text{EUR}34,000 = \text{EUR}3,400$

Fuel costs are wholly borne by BlueWave. The maintenance value is to be included as part of the taxable value of the fringe benefit, irrespective of whether the costs are borne by BlueWave or by the senior sales manager. Furthermore, the vehicle value exceeds EUR28,000.

Therefore:

Fuel value = $5\% \times \text{EUR}34,000 = \text{EUR}1,700$

Maintenance value = $5\% \times \text{EUR}34,000 = \text{EUR}1,700$

Car value = EUR34,000. Therefore, PUP = 55%.

Annual fringe benefit value = $(3,400 + 1,700 + 1,700) \times 55\% = \text{EUR}3,740$

Van

The van is assigned to a technical employee for daily use. Therefore, despite the van being regularly kept, overnight and in weekends, outside of the employer's premises, the use of such van does not constitute a Category 1 fringe benefit on the basis that it is assigned for daily use by the employee (for instance, for point-to-point services). It follows that the annual fringe benefit value is nil.

Number 2

Apartment

The apartment is immovable property and is owned by the employer. Therefore, the provision of the apartment constitutes a Category 2 fringe benefit, valued at 5% of the higher of the market value and the cost price. Therefore:

Total value for a whole year = $5\% \times \text{EUR}480,000 = \text{EUR}24,000$

Since the apartment was provided to the engineer for seven months, the value of the fringe benefit is to be apportionated accordingly as follows:

Annual fringe benefit value = $\text{EUR}24,000 \times 7/12 = \text{EUR}14,000$

Number 3

EUR200,000 loan

Such beneficial loan arrangement constitutes a Category 3 fringe benefits, valued at the difference between the interest that would be payable on the loan at the currently applicable benchmark rate of 3.2% and the interest payable on the loan at the beneficial 1.5% interest rate. This is based on the assumption that BlueWave is not in the business of providing loans and therefore, the fringe benefit does not qualify for the in-house benefit reduction.

Annual fringe benefit value = $(3.2\% - 1.5\%) \times \text{EUR}200,000 = \text{EUR}3,400$

EUR50,000 loan

Given that the loan is being provided to a shareholder who owns more than 25% of the issued share capital of BlueWave and also services as a director, such beneficial loan arrangement shall not be treated as a taxable fringe benefit. Therefore, the annual fringe benefit value is nil.

Number 4

The share aware benefit constitutes a Category 3 fringe benefit, valued at the difference between the total price that would have been payable

by the employees had they acquired the shares at market value, and the price actually paid by the employees for the shares acquired.

Fringe benefit value = (EUR12 - EUR5) x 600 shares = **EUR4,200**

The above value (apportioned between the employees in proportion to the number of shares received by each employee) are taxable at the progressive rates of taxation which apply to the employee in question.

Number 5

Reimbursements paid to employees may constitute taxable fringe benefits insofar that the expenses being reimbursed are private expenses, and such expenses are not classified as expenses which shall not be treated as fringe benefits in terms of the Fringe Benefit Rules (such as, for example, insurance that is provided generally to all employees).

In certain cases, a capping may be imposed, beyond which the reimbursement shall be treated as a fringe benefit. For instance, gifts provided to employees are not treated as fringe benefits provided that they do not exceed EUR120. Any gifts which exceed such threshold would constitute taxable fringe benefits in the hands of the employees. Another example relates to insurance expenses, where such expenses shall not be treated as fringe benefits, unless the related cost is three times as much as the lowest cost of providing such insurance to employees. That being said, certain reimbursed expenses, such as the cost of work uniforms, shall not be treated as taxable fringe benefits in any case.

Answer-to-Question-__5__

The first Anti-Tax Avoidance Directive ('ATAD 1'), which was adopted in 2016, introduced the core anti-avoidance measures, which include the interest limitation rules, Controlled Foreign Company ('CFC') rules, exit taxation, the general anti-abuse regulation ('GAAR'), and the hybrid mismatch rules. That being said, the adoption of the second Anti-

Tax Avoidance Directive ('ATAD 2') in 2017, expanded the scope of the hybrid mismatch rules to also include mismatches involving third party arrangements. Indeed, the provisions of ATAD 2 built on the recommendations of the OECD BEPS Action Plan 2 - Neutralising the Effects of Hybrid Mismatch Arrangements.

Hybrid mismatches may arise by virtue of differences in the legal characterisation by the jurisdictions involved, of an entity, a financial instrument (or the payments made under such instrument), or a permanent establishment. The hybrid mismatch arrangements falling within the scope of ATAD 2 and, by implication, the Maltese tax system include arrangements giving rise to a deduction without inclusion ('DNI') outcome, such as payments made under a hybrid financial instrument, payments made by/to a hybrid entity, the allocation of payments between a head office and a permanent establishment, or between two or more permanent establishments (payment allocation mismatch), as well as arrangements giving rise to a double deduction ('DD') outcome.

For each type of hybrid mismatch arrangement falling within the scope of the rules, ATAD 2 provided a primary and a secondary rule through which the respective arrangement may be neutralised. However, ATAD 2 offered the possibility of a number of opt-outs from the applicable secondary rules. Indeed, Malta utilised all the available opt-outs in this respect, such that the secondary rule is only applied in Malta when it comes to payments made under a hybrid financial instrument and payments made by a hybrid entity.

By way of example, should Malta be involved in a hybrid mismatch arrangement due to a payment being made by a hybrid entity (giving rise to a DNI outcome), the primary rule requires that the deduction is denied where Malta is the payer jurisdiction, insofar as the deduction is only being allowed in respect of an amount that is not dual-inclusion income. The secondary rule requires that where Malta is the payee jurisdiction and the deduction is not denied in the payer jurisdiction, the relevant income is included in the tax base of the Maltese entity.

Having said that, when it comes to payments made to a hybrid entity, although Malta did not opt to apply the secondary rule in such cases, an exceptional rule is applied in such cases. This is because where Malta is the payee jurisdiction and the deduction is not denied in the payer

jurisdiction, Malta follows a separate rule whereby the entity concerned is deemed to be resident in Malta for tax purposes, such that the income would be subject to tax in Malta, thereby achieving the same outcome as if the secondary rule had been applied.

In addition to all the above-mentioned hybrid mismatch arrangements, ATAD 2 also provided for certain special types of hybrid mismatches, including imported hybrid mismatches and tax residency mismatches, together with the ways in which such arrangements may be neutralised to address tax avoidance. For instance, with reference to the Maltese tax system, a tax residency mismatch is to be neutralised depending on whether the other jurisdiction involved is an EU Member State with which Malta has a double taxation treaty, or a third country.

Answer-to-Question-__8__

Number 1

In terms of Article 5A(5) (e) of the ITA, the 5% property transfers tax rate is available where an immovable property situated in Malta is transferred, on or after 1st January 2015, within 5 years from the date of acquisition. Given that the property was transferred by Alpha Ltd after one year from its acquisition, the 5% reduced rate seems to be applicable at first glance. However, the said 5% rate is only applicable insofar that Alpha Ltd did not carry out any works on that property for which a development permission was required in terms of the Development Planning Act. In view of this, the 5% property transfers tax rate is not applicable to such transfer. Therefore, such transfer will be subject to the general tax rate of 8%, applied to its transfer value since it was acquired in 2025.

In view of the development works carried out, should this property be transferred to the Government of Malta pursuant to an acquisition of the property in terms of the Land Acquisition (Public Purposes) Ordinance, the property transfer would be eligible for exclusion from Article 5A at the option of Alpha Ltd under Article 5A(3) (e).

Number 2

The exclusion in terms of Article 5A(3)(h) of the ITA is applicable to transfers made by non-resident persons who are resident for tax purposes in another country. Such exclusion is only available if the non-resident person provides the notary with a statement signed by the tax authorities of his country of residence, confirming the person's residence in that country.

However, such exclusion shall only apply if the non-resident person making the transfer is not owned and controlled by, directly or indirectly, nor acts on behalf of individuals who are ordinarily resident and domiciled in Malta. Furthermore, the provisional tax paid by the non-resident transferor in relation to the property transfer will not be refundable to the transferor in terms of the refundable tax credit system under Article 46 of the Income Tax Management Act.

In view of the above, such exclusion from Article 5A will not be applicable upon an eventual disposal by the non-resident, given that such person was controlled by a Maltese resident and domiciled person.

Number 3

Given that the immovable property being transferred is situated in Malta, and there are no exclusions or exemptions from Article 5A which may apply to such transfer, the property transfer shall be taxed at the applicable final tax rate in terms of Article 5A of the ITA, rather than under Article 5 of the ITA. Indeed, Article 5A applies regardless of whether the property being transferred is of a trading nature or a capital nature. Given that Alpha Ltd was involved in multiple property transfers, it could be the case that such transfer is of a trading nature, thereby falling outside the scope of Article 5 altogether. However, such a determination would need to be made by applying the Badges of Trade, considering all the relevant facts and circumstances.

Number 4

In terms of Article 5A(5)(b) of the ITA, since the property was inherited in 2010 (that is, after 25th November 1992), and no exclusions

from Article 5A are being opted for, if Mr Alpha decides to transfer such inherited property, it might be taxed at a final tax rate of 12%, applied on the difference between the transfer value and acquisition value of the property. Having said that, Article 5A(5) (b) specifies that this method of taxation does not apply if the property being transferred formed part of a project. Hence, since Mr Alpha's property formed part of a project, Article 5A(5) (b) of the ITA will not be applicable. In view of this, should the inherited property be transferred by Mr Alpha, such transfer would be taxed at the general rate of 8% of the transfer value given that it was inherited in 2010.