Part A

Answer-to-Question-_1_

Part 1:

Digital Limited (DL) is a Maltese registered company. This implies that it is both resident and domiciled in Malta. As a result, DL is taxable on the worldwide basis of taxation. This means that it is taxable on any income and capital gains arising in Malta as well as any income and capital gains arising abroad.

Mr Borg transferred his shares in DL to a private limited liability company incorporated in the Netherlands (i.e. not domiciled in Malta) and to AF plc of which investors are individuals who are neither resident nor domiciled in Malta. Such a transfer of shares is a transfer of a controlling interest which implies that the higher of the market value and the consideration for the transfer needs to be found.

- The sum of EUR 500,000 is foreign source income taxable in Malta under Article 4(1)(a) of the Income Tax Act, that is, income from trade. This is allocated to the Foreign Income Account (FIA). Tax due is equal to EUR 175,000.

- The sum of EUR 600,000 is chargeable to tax in Malta. Since DL has a branch in Italy, this indicates that DL has established a permanent establishment in Italy. As a result, the sum of EUR 600,000 is allocated to the Final Tax Account (FTA).

- The gain of EUR 5 million is a sale of intellectual property from DL (i.e. the subsidiary company) to its parent company. Since DL and Borg Holdings Ltd are related companies, this transfer is exempt from capital gains tax due to the intra-group transfer. Therefore, the gain of EUR 5 million is allocated to the UA.

- The gain of EUR 6 million is chargeable to tax since the proceeds were received in DL's Maltese bank account. This is allocated to the FIA.

- The sum of EUR 200,000 from the French company: DL posted one of its employees to France. This could potentially imply that DL established a permanent establishment in France. This depends on the double tax treaty between Malta and France and the period fo time that the DL's employee spends in France. This is allocated to the Final Tax Account (FTA).

- The sum of EUR 100,000 payable under the terms of a software maintenance services agreement is allocated to the Maltese Taxed Account (MTA) and chargeable to tax at 35%. The tax due is equal to EUR 35,000.

- The sum of EUR 250,000 for services rendeted by one of DL's employees in Italy for a period of 3 months. This implies that DL did not establish a permanent establishment in Italy since the employee only spent 3 months in Italy. This is allocated to the FIA and the tax due is equal to EUR 87,500.

- The sum of EUR 400,000 to refrain from competing with a particular competitor is chargeable to tax. This is foreign source income and therefore allocated to the FIA. The tax due is equal to EUR 140,000.

- The EUR 50,000 of interest paid on late payment of an invoice is foreign source income chargeable to tax. This is allocated to the FIA and the tax due is equal to EUR 17,500.

- The tax refund of EUR 20,000 is allocated to the Untaxed Account since it falls outside scope.

- EUR 2,000 in interest paid on the late payment of the abovementioned tax refund is also allocated to the Untaxed Account.

- The sum of EUR 200,000 gross of Spanish withholding tax is allocated to the FTA since the Company can apply the participation exemption.

- Salaries and wages of EUR 400,000 are deductible. They are allocated to the MTA.

- Interest paid is also deductible.

- With respect to business travelling expenses, we need to confirm that they were wholyl and exclusively incurred in the production of the income.

- Donations to foreign charities are added back for tax purposes.

- Rental expense is deductible. It is allocated to the IPA. If the business premises are owned by a related party, an allocation of Annual Market Rent of EUR 250 per square metre is to be allocated to the IPA.

Part 2:

A distribution of profits from the FTA does not incur any further tax.

A distribution of profits from the UA only attracts further tax if the person receiving the dividend is considered to be a receipient as defined under the Income Tax Act. In such case, 15% withholding tax applies. If the person receiving the dividend does not fall within the definition of a recipient as defined under the Income Tax Act, no further tax is applicable on a distribution of profits from the UA.

In the case of distributions of profits from the other tax accounts, i.e. from the IPA, the MTA and the FIA, 35% of tax applies. The full imputation system is applicable. Besides, with respect to distributions from the MTA and the FIA, the refundable tax credit system is applicable.

There are four types of tax refunds available under the Income Tax Act. These are:
- 100% refund
- 5/7 refund
- 2/3 refund

- 6/7 refund

The refunds can only be taken on the tax paid with respect to income allocated to either the Maltese Taxed Account (MTA) or the Foreign Income Account (FIA).

The 100% refund is applicable in the case that the company waived off the possibility of applying the participation exemption yet it satisfied the anti-abuse conditions presented by Article 12(1)(u) of the Income Tax Act.

If the company waived off the possibility of applying the participation exemption, however it did not satisfy the anti-abuse conditions presented by Article 12(1)(u) of the Income Tax Act, then the 5/7 refund is applicable. The 5/7 refund may not be applied in respect of profits the company has claimed relief of double taxation.

In the case that the company claimed double taxation relief through treaty relief or unilateral relief (because the company does not have an empowerment clause to be able to take the flat-rate foreign tax credit), the 2/3 refund is applicable.

The 6/7 refund is applicable by default. It can be availed of in the case of distributions made from the MTA. With respect to distributions from the MTA, the 5/7 refund may also be applicable.

---------DO-NOT-EDIT-THIS-DIVIDER----------

Part A

Answer-to-Question-_2_

Part 1

Melita Shipping Ltd (MSL) is a Maltese registered company which implies that it is resident and domiciled in Malta, therefore taxable on the worldwide basis of taxation. On the other hand, International Shipping Company Ltd (ISC) is registered in Liberia, it is not resident in Malta.

- The transfer by ISC of Sajjied MV to a Maltese resident fishing company

Income Tax: A Balancing Statement would need to be submitted by MSL in accordance with Article 24 of the Income Tax Act since MSL is the company which is incurring wear and tear allowances on the trawler. The balancing allowance (i.e. the loss on disposal in accounting terms) is deductible in the tax computation of the income tax return of MSL.

VAT: No VAT is applicable.

DDT: No duty is applicable.

- The transfer at current market value from ISC to MSL

This is a transfer by a non-Maltese resident to a Maltese resident.

Income Tax: ISC and MSL are related companies under the Income Tax Act. Therefore, the intra-group exemption applies because it is a transfer from one company to another company. If it were a transfer from a company to an individual or vice-versa, the intra-group exemption would not apply. In this case, the transaction is exempt from income tax.

VAT: No VAT is applicable.

DDT: No duty is applicable.

- The transfer at current market value from ISC to MSL of a self-propelled dredging vessel

This is a transfer by a non-Maltese resident to a Maltese resident.

Income Tax: This is chargeable to tax under Article 5 of the Income Tax Act.

VAT: is not applicable.

DDT: is not applicable.

- The transfer at current market value from ISC to MSL of a stationary ship

This is a transfer by a non-Maltese resident to a Maltese resident.

Income Tax: is not applicable.

VAT: is not applicable.

DDT: The ship is not situated in Malta, therefore no duty is applicable unless the document of transfer is executed or made use of in Malta.

- The transfer to third parties of the permanent berthing

This is a transfer by a non-Maltese resident to third parties of a permanent berthing right which is not located in Malta.

Income Tax: is not chargeable on such a transfer.

VAT: is not chargeable.

DDT: Duty is not applicable.

- The transfer of MSL's fishing licence at a profit

This is a transfer by a Maltese resident to a third party Maltese resident.

Income Tax: The capital gain derived from this transfer is taxable under Article 5 of the Income Tax Act.

VAT: is applicable.

DDT: Duty is applicable either at 2% or at 5% on the document transfer (the fishing licence).

- The transfer of fishing equipment at a loss

This is a transfer by a Maltese resident to a third party Maltese registered company.

Income Tax: A Balancing Statement would need to be submitted in accordance with Article 24 of the Income Tax Act. This is because the Company would have taken wear and tear allowances on the fishing equipment. The balancing allowance (i.e. the loss on disposal in accounting terms) is deductible.

VAT: The transfer of fishing equipment is subject to VAT because fishing activities are the main trading activity of the company.

Duty: is not chargeable.

- An interest-bearing loan of EUR 20 million

This is a transfer by a non-Maltese resident to a Maltese resident.

Income Tax: The transfer of the loan per se is not subject to income tax.

VAT: is not chargeable.

DDT: Duty is applicable at 2% (or at 5% if the value of the shares are in a company which has at least 75% of its total assets in immovable property) if the document is exercised or made use of in Malta.

- The secondment of employees with a consideration to be charged

Income tax: is applicable on the consideration to be charged. Besides, the employees should be registered under the Final Settlement System.

VAT: is not chargeable.

Duty: is not chargeable.

- Use of intellectual property by MSL

Income Tax: is applicable on the annual royalty payment.

VAT: is not applicable.

DDT: Duty is applicable at 2% (or at 5% if the value of the shares are in a company which has at least 75% of its total assets in immovable property) if the document is exercised or made use of in Malta.

Part 2:

MSL is a Maltese registered company which implies that it is resident and domiciled in Malta. Therefore, it is taxable on the worldwide basis which means that it is taxable on all income and capital gains arising in Malta and all income and capital gains arising abroad.

ISC is a company registered in Liberia. It is not resident and domiciled in Malta which implies that it is taxable on the source basis of taxation, that is, on any income and capital gains arising in Malta. ISC would need to pay tax in Malta with respect to the employees working in Malta. Besides, the annual royalty payment being paid by MSL to ISC is arising in Malta. This could mean that ISC is obliged to pay tax in Malta with respect to such an annual royalty payment.

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<u>Part B</u>

<u>Answer-to-Question-_3_</u>

Article 4(1)(b) of the Income Tax Act brings to charge to tax any income from employment or office including any benefit in kind. The latter refers to fringe benefits. In this regard, one shall refer to the subsidiary legislation relating to the Fringe Benefit Rules.

GEL should apply for a PE registration number since it is employing employees. This is done by submitted a PE registration form. As a result, GEL would be provided with a PE number.

Tax implications of the remuneration package, identifying any possibilities of tax mitigation:

Since the work being carried out is highly specialised, it would be worth looking at whether the employees qualify for the Highly Qualified Persons Rules. In such case, they would be taxable at a 15% tax rate. This is only applicable with respect to certain job positions.

Base salary to be paid by bank transfer - This is taxable according to the tax rates presented by Article 56 of the Income Tax Act. The base salary should be declared under the Final Settlement System (hereinafter referred to as "FSS").

Additional salary paid in virtual currency - This is taxable.

Coupons entitling employees to consume meals at the GEL canteen free of charge - This is not taxable because the Fringe Benefits Rules specifically state that if there is a special canteen for staff, then such meals provided to the staff are not considered to be fringe benefits.

Bonus paid to employees who do not avail themselves of their entire leave entitlement - This is taxable under the FSS Rules.

Free access to GEL's in-house gym - Since the gym is in-house, it is not taxable.

Free annual 'teaming vacation' in Greece - This is taxable because it is not a business trip. It includes the employees and their spouses which implies that it does not seem to be a work-related trip. Therefore, this implies that it is for the employees' own enjoyment which implies that it is taxable.

Free health insurance - This is not taxable since the employee may choose not to avail of such health insurance.

A private pension plan - This is taxable.

A virtual equity token - This is only taxable when the equity share in the company is acquired. Unless the equity share in the company is acquired, then it is not taxable. This is like a share option scheme whereby the employee is provided with a share option. If the share option is exercised, then it becomes taxable. Otherwise, it is not taxable.

Performance bonus calculated on GEL's annual turnover - This is taxable.

Use of a car owned by GEL, with the employee to pay all fuel and maintenance costs -

The rules with respect to the fringe benefits relating to motor vehicles are divided into two: private use of a motor vehicle and a car cash allowance (also referred to as a vehicle allowance). Since the car is owned by GEL, this indicates that it does not fall within the remit of the fringe benefits relating to motor vehicles and therefore it is not taxable under the Fringe Benefit Rules. In order to fall within the remit of the Fringe Benefit Rules, the employee should be able to use the motor vehicle outside of the normal working hours and the motor vehicle is not left at the business premises. This does not seem to be the case because the motor vehicle is owned by GEL and therefore it falls outside the scope of the Fringe Benefit Rules.

Free accommodation in a flat owned by GEL Property Ltd - This is not taxable since the Fringe Benefit Rules contemplate the private use of property. In this case, the property is owned by GEL's fully owned Maltese subsidiary.

Free use of a childcare centre - This is not taxable under the Fringe Benefit Rules because the childcare centre is owned by a company which is ultimately controlled and beneficially owned by teh sole shareholder of GEL.

Reimbursements for primary school fees - This is taxable under the Fringe Benefit Rules.

Reimbursements for elderly care home fees - This is taxable under the Fringe Benefit Rules.

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<u>Part C</u>

<u>Answer-to-Question-_4_</u>

1. Since Mr Gomes is a Brazilian national, this is the first indication that he is not

domiciled in Malta. The second indication is that Mr Gomes intends to move to France as soon as he begins to experience mobility issues. This implies that his domicile has not changed to Malta since he does not intend to stay in Malta for the rest of his life. Since Mr Gomes plans to reside in Malta for the next 10 years and has acquired Maltese citizenship, this implies that he is resident in Malta. Therefore, Mr Gomes is resident but not domiciled in Malta which implies that he is entitled to benefit from the remittance basis. This means that he is taxable on income and capital gains arising in Malta and any foreign sourced income remitted to / received in Malta. He is not taxable on any foreign sourced capital gains.

Mr Gomes would lose the remittance basis of taxation if he changes his mind and intends to live in Malta forever, thereby meaning that his domicile would change to Malta. If his residence and domicile are both Malta, he would be taxable on the worldwide basis of taxation. This means that he would be taxed on all income and capital gains arising in Malta and also on any income and capital gains arising abroad.

Alternatively, if Mr Gomes sells his apartment in Sliema, Malta and cuts all ties with Malta by not living in Malta or staying in Malta for a period of less than 183 days, this could mean that he loses the remittance basis and is taxed on the source basis of taxation which implies that he is only taxed on any income and capital gains arising in Malta.

2. One tax benefit of the remittance basis of taxation is that capital gains arising abroad are not taxable in Malta. Besides, in the case that Mr Gomes is taxed on any income arising abroad which was remitted to / received in Malta and he is taxed on such income both in Malta and abroad (i.e. incurring a residence-source conflict), double taxation relief can be applied if the circumstances so permit. These include either treaty relief or unilateral relief becase flat-rate foreign tax credit is only applicable to companies. These are available under the credit method.

3. Mr Gomes would need to declare both his income and capital gains arising in Malta as well as the income arising abroad which is remitted to / received in Malta. With regards to the latter type of income, that would be taxable in Malta even though it would be

arising from a foreign country or terroritory. Mr Gomes would be obliged to file a tax return with the Commissioner for Revenue by the 30th of June of every year stating the income and capital gains chargeable to tax in Malta.

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Part C

Answer-to-Question-_6_

Part 1

1. Maltese Income Tax implications

The fact that the Maltese resident public relations company is an independent agent implies that USDC has not created a permanent establishment in Malta because the Maltese resident public relations company is an independent person. It does not take decisions on behalf of USDC but it only advertises USDC's services on Maltese websites. The income received from USDC with respect to the advertisements is chargeable to tax in Malta under the Income Tax Act.

VAT implications

This is an example of distance sales because the Company is based in the US. USDC would need to register its Company in Malta if it exceeds a particular threshold listed down in the VAT Act.

The Maltese resident public relations company should charge VAT with respect to the advertisement that it issues for USDC.

Part 2

2. a. Irlandiza Ltd was incorporated in Luxembourg. This implies that the domicile of the company is not Malta but it is Luxembourg. The company decisions of Irlandiza Ltd are being taken from Malta, the compant rented office space in Malta and appointed a Maltese resident CEO. This implies that Irlandiza Ltd is resident in Malta because its effective management and control is taking place in Malta. This is referred to as a res non-dom company because it is resident but not domiciled in Malta. As a result, Irlandiza Ltd is not subject to worldwide basis of taxation but it is subject to the remittance basis of taxation. This means that it is taxable on any income and capital gains arising in Malta and on any income arisign abroad which is remitted to / received in Malta. It is not taxable on any capital gains arising abroad.

2. b. Since the company's objects are limited to the holding of assets, this implies that Irlandiza Ltd is a holding company. This indicates that its revenues should be classified as passive because the company is not actively trading.

2. c. The interest income shall be remitted to the company's main bank account in Malta. This implies that such interest income is taxable in Malta.

The royalty income shall be transferred to the company's secondary bank account in Switzerland. This indicates that it shall not be taxable in Malta because such foreign source income was not received in / remitted to Malta.