

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

December 2021

MODULE 2.03 – CYPRUS OPTION

ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

TIME ALLOWED – 3¼ HOURS

This exam paper has **three** parts: **Part A**, **Part B** and **Part C**.

You need to answer **five** questions in total. You will **not** receive marks for any additional answers.

You must answer:

- **Both** questions in **Part A** (25 marks each)
- **The** question in **Part B** (20 marks)
- **Two** questions from **Part C** (15 marks each)

Further instructions

- All workings should be made to the nearest month and in Euros, unless otherwise stated.
- As you are using the online method to complete your exam, you must provide appropriate line breaks between each question, and clearly indicate the start of each new question using the formatting tools available.
- Marks may be allocated for clarity of presentation of your answers.
- The time you spend answering questions should correspond broadly to the number of marks available for that question. You should therefore aim to spend approximately half of your time answering Part A, and the other half answering questions in Parts B and C.
- There is no separate reading time, so you can start typing your answers as soon as the exam begins. However, we recommend that you set aside some time to thoroughly read each question and plan each of your answers.

PART A

You are required to answer BOTH questions from this Part.

1. Information Technology Sequence Ltd (ITS) is a company resident in Cyprus for tax purposes. Its main activity is the leasing from third party owners and subsequent sub-leasing of an online casino platform (Platform 1) to online casino operators who, acting in their ordinary course of trade, make the casino games available to end users.

Following the initial success of ITS's business, the company decided to further expand its operations by acquiring or developing its own platform and leasing it to casino operators.

On 1 January 2021, the company entered into a contractual agreement with an unrelated company, Technology Ltd, which owns a software platform (Platform 2). Technology Ltd agreed to sell Platform 2 to ITS, and to provide ongoing back-office support and ancillary operating tools and components that are necessary for the operation of the platform.

In return, ITS will pay cash to Technology Ltd in full settlement of the acquisition. The value of the purchase consideration amounts to €10 million and is equal to the fair value of Platform 2, as determined by an independent valuer.

The initial intention was that ITS would itself modify, upgrade and further develop Platform 2 following the acquisition, and license it to casino operators.

After consulting with financial advisers, ITS decided to keep the development of Platform 2 and its licensing separately. In order to facilitate this, the company will incorporate a wholly owned Cyprus tax resident subsidiary company, Information Technology Sequence Sub Ltd (ITS Sub), which will acquire Platform 2 and undertake development of the software platform. It will then license it on market value terms to ITS, which will subsequently sub-license it to casino operators.

In this respect, ITS will transfer Platform 2 to ITS Sub in exchange for the issue of shares at a share premium by the latter. The actual development function will be outsourced by ITS Sub to an independent party technical expert.

You are required to analyse the Income Tax implications for the 2021 tax year, in particular relating to the applicable IP Box Regime, arising from the transactions described for:

- | | |
|---------------------------------------|------|
| 1) ITS in relation to Platform 1. | (12) |
| 2) ITS Sub in relation to Platform 2. | (13) |

Total (25)

2. Lifeblood Media Ltd (LM) is a company resident in Cyprus for tax purposes. LM is wholly owned by Treasury Management Ltd (TM), a company incorporated and tax resident in the British Virgin Islands.

TM provided the following financial assistance to LM:

- 1) The 'TM Payable', under the following agreements:
- Agreement on Assignment of Receivable, dated 30 April 2017, and
 - Agreement on Novation of Rights and Liabilities, dated 30 April 2017,

The TM Payable as at 31 December 2021 amounts to CZK 1 billion (including accrued interest), carries interest at the rate of the six-month Prague Inter Bank Offered Rate (PRIBOR) plus 4.5%, and is due for repayment any time on or before 31 December 2022.

- 2) The 'TM Current Account 1 Payable', which as of 31 December 2021 amounts to CZK 500,000 and is interest free, and
- 3) The 'TM Current Account 2 Payable', which as of 31 December 2021 amounts to CZK 100,000 and is interest free.

As of December 2021, LM holds the following wholly owned investments, collectively referred to as 'the Subsidiaries':

- Lifeblood Media Czech Ltd (LMC), a company tax resident in the Czech Republic; and
- Digital Technologies Czech Ltd (DTC), a company also tax resident in the Czech Republic.

The TM Payable and TM Current Account 1 Payable were used to finance the acquisition of the above investments, together with the following loans provided by TM to the Subsidiaries:

- i) Loan Receivable from LMC, which originally totalled CZK 520,000, carries interest at the rate of the six-month PRIBOR plus 6.5%, and is due for repayment any time on or before 31 December 2022.

On 1 January 2021, this particular Loan Receivable was assigned by LMS (as the Original Borrower) to DTC (as the New Borrower).

Following the assignment, as of 31 December 2021 LM has a Loan Receivable from DTC amounting to CZK 520,000 (including accrued interest).

- ii) Loan Receivable from DTC, as of 31 December 2021 amounting to CZK 850,000,000 (including accrued interest), carrying interest at the rate of the six-month PRIBOR plus 6.5% and due for repayment any time on or before 31 December 2022.

The TM Current Account 2 Payable was used to acquire 3% of the share capital of a Dutch company. The remaining 97% shareholding was acquired by a Russian investor unrelated to LM.

LM is currently contemplating converting the TM Payable and TM Current Account 1 Payable into equity, thus settling most of its obligation towards the parent company TM. It is possible that the conversion will be effected as of 1 January 2022.

In this respect LM will issue new shares at a premium, which will equal the said total amounts due.

You are required to:

- 1) **Analyse the Income Tax implications for LM for the 2021 tax year, relating to the interest income generated and interest expense incurred.** (12)
- 2) **Analyse the Income Tax implications for LM, relating to the contemplated capitalisation of the Payables described. You should assume that the relevant Cyprus direct tax legislation, regulations and tax circulars applicable in the 2022 tax year remain unchanged from 2021.** (13)

You are not required to perform any arithmetical computations.

Total (25)

PART B

You are required to answer THIS question.

3. SHL Cyprus Ltd (SHL Cyprus) is a company incorporated and tax resident in Cyprus. It acts as a holding and financing company for a group of companies, comprising:

- SHL Netherlands Ltd, a company incorporated and tax resident in the Netherlands;
- SHL Bermuda Ltd, a company incorporated and tax resident in Bermuda; and
- SHL Estonia Ltd, a company incorporated and tax resident in Estonia.

SHL Cyprus is currently in the process of becoming a Public Limited Company (PLC) in Cyprus. It is also in the process of obtaining the status of a European Company (SE) under European Regulation (EC) 2157/2001 of 8 October 2001 and by the end of December 2021 it will transfer its legal seat to Estonia.

At the time of transfer of the legal seat, SHL Cyprus is expected to show on its balance sheet, inter alia, the following items:

- Investment in SHL Netherlands Ltd;
- Investment in SHL Bermuda Ltd;
- Investment in SHL Estonia Ltd;
- Loans receivable;
- Trade receivables; and
- Derivatives debit balance, relating to interest rate swaps and currency forward contracts.

You are required to:

1) **Describe the exit taxation provisions of Article 33B of the Cyprus Income Tax Law (L118(I)/2002 as amended).** (12)

2) **Analyse the exit taxation implications for SHL Cyprus for the 2021 tax year.** (8)

Total (20)

PART C

You are required to answer TWO questions from this Part.

4. Ms Andreou, who is domiciled and tax resident outside Cyprus, signed a contract of employment with AS Services Ltd, a start-up company tax-resident in Cyprus. Under the terms of the contract, Ms Andreou's employment commenced on 1 January 2021 and her gross income for the 2021 tax year amounted to €101,550.

Ms Andreou was a Cyprus tax resident for more than ten years between October 1995 and December 2005, and used to work for another company that was tax resident in Cyprus. Since January 2006 she has been living and working in the United Kingdom.

Amid the COVID-19 pandemic, Ms Andreou was able to relocate to Cyprus on 1 January 2021 and she became a Cyprus tax resident individual.

As an additional incentive to relocate to Cyprus, AS Services Ltd offered Ms Andreou the option to take up the status of a shareholder, assigning to her 20% of the issued share capital of the company as from the date on which her employment commenced. AS Services Ltd proved to be a very profitable business and distributed a significant portion of its profits as interim dividends in 2021.

The company also keeps a current account with Ms Andreou, allowing her to withdraw cash at any time, with a ceiling of 30% of her annual gross salary.

In December 2020, immediately prior to her relocation to Cyprus, Ms Andreou's UK employer, UK Consulting and Services Ltd, was seeking alternative ways to extend its relationship with her. The company discussed with Ms Andreou the possibility of her offering services to the company from Cyprus, either as an independent consultant or under the explicit directions and instructions of UK Consulting and Services Ltd, commencing in early 2021.

You are required to:

- 1) **Analyse the Income Tax and Special Defence Contribution implications for Ms Andreou of her employment with AS Services Ltd, as well as of her participation in the share capital of the company, for the 2021 tax year.** (6)
- 2) **Analyse the Income Tax implications for Ms Andreou of the alternative proposals offered by UK Consulting and Services Ltd, for the 2021 tax year.** (9)

Total (15)

5. “Globalisation has led to a lot of examples of international double taxation.”

You are required to critically analyse the different types of double taxation that can arise, including examples, and describe the tools made available to the Cyprus Tax Department to provide relief from such cases of double taxation. (15)

6. Law 89/2001 regarding the introduction of the General Health Scheme (GeSY) as amended, came into force on 1 March 2019 in terms of GeSY contributions.

You are required to:

- 1) **Define the persons (natural or legal) that have an obligation to pay GeSY contributions, stating the type of income for each type of person which is liable for GeSY contributions.** (4)
- 2) **Explain which types of income are exempt from GeSY contributions, including two examples, and which items of income are exempt from Income Tax and Special Defence Contribution (SDC) yet subject to GeSY contributions.** (11)

Total (15)

7. The Value Added Tax (VAT) amendment law 157/2017, among other provisions, provides for the imposition of VAT on the disposal of ‘undeveloped potentially building land’. The law provides that such disposal is taxable if made by a person carrying out a business or trading operation of such land, and exempts disposals which are made by persons who do not carry out a business activity.

You are required to explain the workings of Interpretation Circular #233, in relation to:

- 1) **What constitutes ‘business activity’ in the context of disposal of ‘undeveloped potentially building land’, for natural persons.** (5)
- 2) **What does not constitute ‘business activity’ in the context of disposal of ‘undeveloped potentially building land’, for natural persons.** (5)
- 3) **The VAT treatment of ‘undeveloped potentially building land’ disposals by legal persons.** (5)

Total (15)