

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2025

MODULE 2.07 – MALTA OPTION

SUGGESTED SOLUTIONS

PART AQuestion 1

	Final Tax Account €	Immovable Property Account €	Foreign Income Account €	Maltese Taxed Account €	Untaxed Account €
1) Dividend from TWL					100,000
2) Dividend from MIL				30,769	-
3) Trading income - Italian PE					150,000
4) Settlement of pre-contractual liability					1,000,000
5) Rental income - Italy warehouse					200,000
6) Rental income - Malta warehouse	300,000				-
7) Salaries and wages					(200,000)
8) Water and electricity					(20,000)
9) Italian Property Taxes					(30,000)
10) Lawyers' (Retainer) Fees					(30,000)
11) Interest on bank loans for warehouses					(25,000)
12) Capital allowances					-
	300,000	-	-	30,769	1,145,000
Tax at 35%	-	-	-	10,769	-
Tax at 15%	45,000	-	-	-	-
Tax at source	-	-	-	(10,769)	-
Tax payable	45,000	-	-	-	-

GML, as a company incorporated outside of Malta but effectively managed and controlled in Malta, is a company resident in Malta but not domiciled therein. Therefore, GML is subject to tax in Malta on all Malta source income and capital gains and foreign source income remitted to, or received in, Malta. GML is not subject to tax in Malta on foreign source capital gains, even if remitted to or received in Malta.

- 1) GML's holding of 5% of the equity shares of TWL means that the holding qualifies as a participating holding.

Therefore, the participation exemption can be applied on the basis that:

- the income of TWL does not arise from "passive interest and royalties", thus satisfying one of the anti-abuse provisions required; and
 - Bahamas is not on the list of non-cooperative jurisdictions.
- 2) Malta source dividend income is subject to tax in Malta, however no further tax should arise as a result of the application of Malta's full imputation system.
- 3) Trading income of the Italian Permanent Establishment is not taxable in Malta since it is not received in Malta. (Furthermore, had it been received in Malta, the participation exemption may be applied.)
- 4) The lump sum payment relating to a pre-contractual liability represents a one-off payment of a capital nature. The asset in question is not an asset included in the exhaustive list of chargeable assets in article 5(1) of the Income Tax Act, and therefore the gain is outside scope of Maltese income tax.
- 5) Rental income from a warehouse in Italy is Italian source income regardless of the residence status of the tenant. As the income is not received in, or remitted to, Malta, the income is outside scope of Maltese tax.
- 6) Rental income from a warehouse in Malta is Malta source income and is therefore subject to tax in Malta, regardless of where it is received. On the basis that the tenant is not a related party, the income can be subject to a final tax of 15% in terms of article 31D of the Income Tax Act.
- 7) GML did not generate taxable income against which the salaries and wages can be claimed. As a result, they are non-deductible and hence being allocated against the untaxed account.

- 8) GML did not generate taxable income against which the water and electricity can be claimed. As a result, they are non-deductible and hence being allocated against the untaxed account.
- 9) Italian Property Taxes are not a tax on income and therefore, no deduction and/or credit may be claimed in Malta by GML.
- 10) GML did not generate taxable income against which the Lawyers' (Retainer) Fees can be claimed. As a result, they are non-deductible and hence being allocated to the Untaxed Account.
- 11) The interest expense cannot be claimed against the Malta source rental income (which is being taxed at the final tax of 15%), or against the non-taxable Italy source rental income.

GML did not generate taxable income against which the capital allowances can be claimed. As a result, no deduction is being claimed.

Question 2

Mr Globals is tax resident in Malta as he spends around 200 days in Malta. As does not intend settling in Malta indefinitely and indeed has intentions to move out of Malta (i.e. to Sicily) eventually, he is not domiciled in Malta. Therefore, he would be taxed in Malta on Malta source income and capital gains and foreign source income remitted to Malta.

	€	
1) 50% Retirement Benefit		- Foreign source income not remitted to Malta
2) 50% Retirement Benefit	20,000	Malta source income
3) Swiss Bank Interest		- Foreign source income not remitted to Malta
4) Consultancy fees	30,000	Consultancy services carried out in Malta, therefore Malta source income
5) Trading in foreign shares	5,000	Trading activity carried out in Malta, being the country of residence
6) Dividend from Italian Company	8,000	Foreign source income remitted to Malta
7) Interest from Malta Government Stocks	2,500	Malta source income
8) Dividend from shares listed on LSE	2,000	Foreign source income remitted to Malta
9) Rental income from US		- Foreign source income not remitted to Malta
10) Pension from US Treasury		- Foreign source income not remitted to Malta
11) Profit on disposal of collectables		Income of a capital nature of assets not included in the list of chargeable assets in terms of article 5(1) of the Income Tax Act
12) Royalty income	10,000	Malta source income, following Mr Globals' residence
13) Income from cession of tenancy rights	4,000	Income from a transfer of a right over immovable property situated in Malta
Chargeable income	81,500	
Less: Income from cession of tenancy rights	(4,000)	Subject to a final tax on immovable property
Chargeable income taxed at Resident Rates	77,500	
Chargeable income subject to a final tax	4,000	

PART B

Question 3

Activity 1

This transfer is between two companies which are not tax resident in Malta. As a result, the transfer is outside scope of Maltese tax.

Activity 2

IGL holds the entire issued share capital of ITCL and therefore ITCL is expected to qualify as a participating holding in the hands of IGL, provided that ITCL is not a property company as defined in the Income Tax Act.

The dividend income from a participating holding can be exempt in terms of the participation exemption on the basis that:

- ITCL is incorporated in Ireland, a country forming part of the EU; and
- Ireland is not included in the EU List of Non-Cooperative Jurisdictions.

Furthermore, the liquidation / cancellation of shares represents a transfer of shares by IGL. In the event that a gain arises on the liquidation / cancellation, the participation exemption may also find application.

Activity 3

No gain is deemed to arise on a transfer of the IGL of the shares in IOCL to IHL since the transfer is between two companies which are controlled and beneficially owned directly or indirectly to the extent of more than 50% by the same shareholders, by virtue of IGL's holding in IHL (as per note 1)). Thus, the transfer falls within the scope of article 5(9) of the Income Tax Act.

Activity 4

On the redomiciliation of BHL to Malta, no immediate Malta tax implications arise. Nevertheless, BHL may make an election for a step up in value of the assets it held prior to redomiciliation to their market value on the date of redomiciliation in terms of Article 4A of the Income Tax Act.

Pursuant to the merger, all assets held by BHL will be transferred to IGL, however on such transfers no gain or loss is deemed to arise since the transfer is between two companies forming part of the same group in terms of article 16 of the Income Tax Act. Therefore, no Malta income tax liability arises in this respect on the basis that the transaction falls within the scope of article 5(9) of the Income Tax Act.

Activity 5

No gain is deemed to arise on a transfer of the immovable property from IPL to IGL since the transfer is between two companies forming part of the same group in terms of article 16 of the Income Tax Act, and thus falling within the scope of article 5(9) of the Income Tax Act.

Activity 6

The income of the IGL Partnership from the assignment of intellectual property to IGL will constitute income subject to tax in the hands of its partners, on the understanding that IGL Partnership has not made an election in terms of article 27(6) of the Income Tax Management Act. We know that IGL's sole shareholder, being a partner in IGL Partnership, is an individual who is not ordinarily resident or domiciled in Malta and therefore is not subject to Maltese tax on a non-Malta sourced capital gain. No Malta income tax liability should arise in respect of the liquidation of IGL Partnership.

Activity 7

Profit Participating Loans do not fall within the definition of securities in terms of article 5(1) of the Income Tax Act, nor are they chargeable assets included in the exhaustive list of chargeable assets in terms of article 5(1). As a result, the transfer of such Profit Participating Loans falls outside the scope of the Income Tax Act.

Activity 8

The right to receive an Article 48(4A) ITMA tax refund is not a chargeable asset included in the exhaustive list of chargeable assets in terms of article 5(1) of the Income Tax Act. As a result, the transfer of such right falls outside the scope of the Income Tax Act.

Activity 9

The transfer of a real right over immovable property situated in Malta is subject to tax in terms of article 5A of the Income Tax Act and will be subject to a final tax of 8% on the transfer value (increased to 10% if the real right was acquired before 1 January 2004, whereas 5% applies if the property is transferred within 5 years of acquisition).

Activity 10

The transfer of residence of IGL will trigger the application of Exit Taxation in terms of the ATAD Rules. Therefore, tax would be levied on the gain attributable to taxable assets, calculated as the market value of the transferred assets at the time of the transfer of residence less their value for tax purposes.

Question 4

Income stream		1) FIA	2) FIA	3) MTA	4) FIA	5) FIA	6) UA	7) UA
Income		300,000	500,000	100,000	3,000,000	300,000	400,000	1,000,000
FRFTC Gross-up	N1	75,000			750,000	75,000		
Foreign Tax Gross-up	N2		214,286					
Grossed-up income		375,000	714,286	100,000	3,750,000	375,000	400,000	1,000,000
14(1)(m) Deduction	N3	(24,797)	(41,328)	(100,000)	(247,970)			
Notional Interest Deduction	N4	(3,910)	(7,447)		(39,096)	(3,910)	-	-
Participation Exemption							(400,000)	(1,000,000)
Chargeable income		346,293	665,510	-	3,462,934	371,090	-	-
Tax Rate		35%	35%	35%	35%	35%	0%	0%
Tax Charge		121,203	232,929	-	1,212,027	129,882	-	-
FRFTC		(75,000)			(750,000)	(75,000)		
DTR			(214,286)					
Tax Due in Malta		46,203	18,643	-	462,027	54,882	-	-

N1

It would be beneficial for FML to claim FRFTC on all income to be allocated to the FIA, with the exception of foreign source royalties from Country B subject to tax at 30%.

N2

The foreign source royalty income of €500,000 is net of foreign tax at 30%. Therefore, this is being grossed up.

N3

In terms of article 14(1)(m) of the Income Tax Act, a deduction in respect of Intellectual Property may be claimed equally over a number of years, being not less than 3 years.

- The deduction against the MTA income has been claimed over 5 years, in order not to exceed the income.
- The deduction against the FIA income has been apportioned on the basis of grossed-up revenue.

N4

NID has been calculated as 7% of the Share Capital and apportioned against all sources of income on an indirect basis (including untaxed income and income attributable to the MTA in respect of which no chargeable income remains after the 14(1)(m) deduction).

PART C

Question 5

Supply 1

Account Opening is typically an exempt without credit supply in terms of the Fifth Schedule, Part Two, Item 3(3).

Supply 2

The provision of legal services is a supply of a service subject to VAT of 18%.

Supply 3

Account Maintenance is an exempt without credit supply in terms of the Fifth Schedule, Part Two, Item 3(3).

Supply 4

Transfers are typically exempt without credit supplies in terms of the Fifth Schedule, Part Two, Item 3(3).

Supply 5

The provision of safe deposit boxes services is a supply of a service subject to VAT of 18%.

Supply 6

The provision of investment advice is a supply of a service subject to VAT of 18%.

Supply 7

The provision of brokerage services in respect of transactions in shares is an exempt without credit supply in terms of the Fifth Schedule, Part Two, Item 3(5).

Question 6

Through the transposition into local legislation of the Anti-Tax Avoidance Directive, the following provisions were introduced into the Maltese Tax System:

- Interest Limitation Rule
- Exit Taxation
- CFC Rule
- GAAR Rule

Interest Limitation Rule

In terms of the Interest Limitation Rule, exceeding borrowing costs (interest expense in excess of interest income) shall be deductible in the tax period in which they are incurred only up to the higher of:

- EUR 3,000,000
- 30% of the taxpayer's earning before interest, tax, depreciation and amortisation (EBITDA).

Furthermore, the following exceptions may find application:

- 1) Costs incurred on loans concluded before 17 June 2016, provided that such loans are not modified after such date, are excluded;
- 2) Costs incurred on loans used to fund a long-term public infrastructure project where the project operator, borrowing costs, assets and income are all in the European Union are excluded;
- 3) Where the taxpayer is a standalone entity, such taxpayer may fully deduct its exceeding borrowing costs; and
- 4) Where a taxpayer is a member of a consolidated group for financial reporting purposes, the taxpayer may fully deduct its exceeding borrowing costs if it can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group.

Provided that, a taxpayer may carry forward exceeding borrowing costs indefinitely, and unused interest capacity for a period of 5 years.

Therefore, following the introduction of the Interest Limitation Rule, interest expenditure which may have previously been deductible in terms of article 14(1)(a) of the Income Tax Act may not longer be deductible even if it is incurred wholly and exclusively in the production of the income.

Exit Taxation

Following the introduction of Exit Taxation, a taxing event charging an imputed taxable gain may be triggered in the following cases:

- 1) A taxpayer transfers assets from its Malta head office to a permanent establishment abroad, where Malta loses the right to tax;
- 2) A taxpayer transfers assets from its Maltese permanent establishment to its head office, where Malta loses the right to tax;
- 3) A taxpayer transfers its tax residence from Malta, unless such assets remain effectively connected with a permanent establishment in Malta; or
- 4) A taxpayer transfers its business carried on by its permanent establishment in Malta, where Malta loses the right to tax.

The Exit Taxation which arises in any one of the instances above is due by the tax return date, but may be deferred through payments in instalments for a period of 5 years in specific cases.

Prior to the introduction of Exit Taxation, no Malta tax would have been levied on the transfers above and Malta would have lost the right to tax the capital gain which would have arisen in Malta.

Controlled Foreign Company Rule

In terms of the Controlled Foreign Company (CFC) Rule, an entity or permanent establishment qualifies as a CFC in the hands of a taxpayer if:

- The taxpayer, by itself or together with associated enterprises, holds a direct or indirect holding of 50% of capital, voting rights or right to profits; and
- The tax paid by that entity is less than half the tax which would have been paid in Malta.

'De minimis' exclusions apply where the entity or permanent establishment has:

- Accounting profits not exceeding €750,000, and non-trading income not exceeding €75,000; or
- Accounting profits amount to no more than 10% of its operating costs.

Where the entity or permanent establishment qualifies as a CFC and the 'de minimis' exclusions do not find application, all undistributed income arising from non-genuine arrangements would be included in the tax base of the taxpayer.

Prior to the introduction of CFC Rules, no Malta tax implications would arise on structures which nowadays qualify as CFCs, unless and until a dividend distribution was effected by such entities.

GAAR Rule

The GAAR Rule introduced through ATAD I is similar, albeit not identical to, the GAAR Rule in article 51 of the Income Tax Act.

The GAAR Rule in the Income Tax Act empowers the Commissioner to disregard any scheme the sole or main purpose of which was to obtain a tax advantage which has the effect of avoiding, reducing or postponing liability to tax, or of obtaining any refund or set-off of tax.

The GAAR Rule in ATAD I provides that in calculating the tax liability in accordance with the Income Tax Act, non-genuine arrangements put in place with the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the tax law should be ignored.

In effect, the introduction of the GAAR Rule in terms of ATAD I has had minimal impact on the Maltese Tax System.

Question 7

The Income Tax Act provides for a number of instances where a tax of 15% is contemplated. The following is an overview of these instances:

Rental Income

In terms of article 31D of the Income Tax Act, a 15% tax on gross rental income, without the possibility to claim any deduction, is contemplated.

Overtime Income

In terms of article 90B of the Income Tax Act, qualifying overtime income is subject to a reduced rate of tax of 15%. In order to be eligible, the taxpayer must be employed on a full-time basis, and the basic weekly wage must not exceed €375 and the taxpayer must not be engaged in a managerial post. The benefit is capped at the lower of €10,000 and the amount resulting from multiplying the actual amount of overtime hours by the hourly rate paid to the employee for overtime (but not exceeding twice the basic hourly rate).

Untaxed Account distributions

Distributions out of the Untaxed Account to a person who qualifies as a recipient in terms of article 61(a) of the Income Tax Act would be subject to a withholding tax of 15%.

Investment Income Provisions

Income of a taxpayer which falls within the scope of the Investment Income Provisions contemplated in article 41 of the Income Tax Act may be subject to tax at the reduced rate of 15%. Such investment income would include interest paid by a bank and other investment income within the Investment Income Provisions paid by a Payor, which includes authorised financial intermediaries.

Long term business of insurance

A 15% tax is also contemplated in article 27(2)(a) of the Income Tax Act in respect of the determinable amount payable by the insurance company to a policy holder resident in Malta. The term 'determinable amount' excludes payments in circumstance involving a death claim or critical illness or permanent total disability as specified in the contract of insurance.

Overseas employment

In terms of article 56(17) of the Income Tax Act, the recipient of emoluments payable under a contract of employment which requires the performance of duties mainly outside Malta is eligible to opt to have the income taxed at 15%. However, the income from overseas employment would be deemed to constitute the first part of the income for that year.

Question 8

Malta employs a tax account system consisting of 5 accounts:

- Final Tax Account ('FTA');
- Immovable Property Account ('IPA');
- Foreign Income Account ('FIA');
- Maltese Taxed Account ('MTA'); and
- Untaxed Account ('UA')

Taxed income or income exempt from tax and not taxable in the hands of the shareholders is allocated to one of the following tax accounts: the FTA, IPA, FIA and MTA.

The difference between the Retained Earnings (distributable profits) and the total of the 4 tax accounts above (therefore, excluding the UA), would fall to be allocated to the UA.

Typically, income, net of tax, is allocated directly to the relevant tax account. However, the Income Tax Act and subsidiary legislation thereto contemplate a system of secondary allocation, wherein income is first allocated to a tax account and then reallocated out of the tax account of the primary allocation and re-allocated instead to another tax account as prescribed by legislation.

The Income Tax Act and subsidiary legislation thereto prescribe the following instances whereby secondary allocations are to be made:

- 1) Reallocation from the MTA and FIA to the IPA in respect of property owned and used by the taxpayer. The secondary allocation is calculated at €250 per square meter;
- 2) Reallocation from the MTA and FIA to the IPA in respect of property owned by a related party and used by the taxpayer. The secondary allocation is calculated at €250 per square meter less any amounts paid for the use of the immovable property. No secondary allocation is required where amounts paid for the use of the immovable property exceed €250 per square meter;
- 3) Reallocation of gross interest, fees or other consideration derived, directly or indirectly, from the granting of loans to finance acquisition or works on immovable property;
- 4) Reallocation of gross insurance premiums related to the insurance of immovable property; and
- 5) Reallocation of 10% of the Notional Interest Deduction claimed to the FTA.

In respect of points (1) to (4) above, where a taxpayer does not have sufficient taxed profits to effect the full secondary allocations, related parties would be obliged to effect the secondary allocations themselves. Furthermore, if after any the related parties effect the secondary allocation there is a residual balance to be reallocated, such balance is carried forward to subsequent years.

In respect of point 5 above, any secondary allocation which may not be effected by the taxpayer in the given year, is not carried forward to subsequent years nor are related parties required to effect the secondary allocation.

The secondary allocation mechanism has served as a vehicle to ensure that access to Malta's Refundable Tax Credit System is reduced in specific circumstances. This is achieved by the reallocations to either the IPA or the FTA, in respect of which no refunds may be claimed.