
Answer-to-Question-_1_

Part A - Question 1

I will first address the section related to Mr Riches:

Mr Riches is ordinarily resident and domiciled in Malta, hence he is taxed on his world wide income.

1) Villa in Malta

The rental income will form part of Mr Riches' taxable income. However, as the villa is rented out to an individual on a long term basis, Mr Riches can opt to apply the circumstances of Article 31D of the Income Tax Act (hereafter "ITA") to the rental income.

Consequently, the gross rental income will be subject to tax at a rate of 15%.

Furthermore, as Mr Riches is an individual, he will not be required to include the rental income in his tax return but will be required to fill in a special form for the reporting of the rental income under Article 31D of the ITA.

2) Chalet in Switzerland

The rental income will be subject to tax at 35%. The rental income would not fall within the scope of Article 31D of the ITA, as the individual renting the chalet is ordinarily resident and domiciled in Malta, thus not within the definition of a

"tenement".

3) Interest income from Maltese bank account

The interest income will be charge to tax in Malta at the rate of 35% under article 4(1)(c) of the ITA. The exemption of article 12(1)(c)(i) is only applicable to non-residents.

4) Dividends from RHL

a) Dividend from the untaxed account via untaxed account

Mr Riches is an individual ordinarily resident and domiciled in Malta, therefore falls within the scope of a "recipient" under Article 61 of the ITA. The dividend received falls within the scope of an "untaxed dividend" as it is paid by a resident company in Malta and it is paid out of distributable profits allocated to RHL's untaxed account.

Consequently, RHL should deduct 15% from the dividend when paying the dividend to Mr Riches.

b) Dividend from untaxed account via participation exemption

Mr Riches is an individual ordinarily resident and domiciled in Malta, therefore falls within the scope of a "recipient" under Article 61 of the ITA. The dividend received falls within the scope of an "untaxed dividend" as it is paid by a resident company in Malta and it is paid out of distributable profits allocated to RHL's untaxed account.

Consequently, RHL should deduct 15% from the dividend when paying the dividend to Mr Riches.

c) Dividend from the final tax account

The dividend from the final tax account shall not be charged to further tax and will not form part of the chargeable income of Mr Riches.

d) Dividend from the immovable property account

The dividend from the immovable property account is subject to the full imputation system and the dividend will be charged to tax at 35%.

The next section relates to the income of RHL:

1) Dividend from Italian property leasing company:

RHL holds more than 5% of the shares in the Italian company, therefore falls within the scope of a participation holding. Furthermore, the anti-abuse provisions have been met, since the holding (Italian company) is within the European Union (hereafter "EU"). Consequently, the dividends are exempt in terms of article 12(1)(u) of the ITA, as the participation exemption is applicable to the dividends.

2) Preference shares held in a tax-exempt holding company:

The participation exemption will not be applicable to the

dividends from the company incorporated in Vanuatu on the basis that the anti-abuse provisions haven't been met. The anti-avoidance proivsions are applicable to dividends and states that the holding should either be:

a) Incorporated in the EU; or
b) be subject to foreign tax at a rate of at least 15%; or
c) have more than 50%. of its income derived from passive income.

The holding company is incorporated outside the EU, isn't subject to tax and lastly earns passive income only, therefore the dividends will not be exempt under article 12(1)(u).

The income should be charged to tax and allocated to the foreign income account (if RHL is empowered to receive such gains or profits). Furthermore, if RHL is empowered to receive income which is allocated to the foreign income account, the flat-rate foreign tax credit of 25% should be utilised under article 92 of the ITA.

3) Dividend from German Trading Company

The holding does not fall within the scope of a equity holding, therefore does not meet the requirements for the participation exemption.

Consequently, the income should be charged to tax and allocated to the foreign income account (on the basis that RHL is empowered by it's Article of Association/Memorandum of Incorporation to receive such gains or profits). Furthermore, if RHL is so empowered to receive income which is allocated to the foreign income account, the flat-rate foreign tax credit of 25% should be

utilised under article 92 of the ITA.

4) Dividend from Spanish holding company

The holding does not fall within the definition of an equity holding, therefore does not meet the requirements for the participation exemption.

Consequently, the income should be charged to tax and allocated to the foreign income account (on the basis that RHL is empowered by it's Article of Association/Memorandum of Incorporation to receive such gains or profits). Furthermore, if RHL is so empowered to receive income which is allocated to the foreign income account, the flat-rate foreign tax credit of 25% should be utilised under article 92 of the ITA.

Answer-to-Question-2

Part A - Question 2

1) The sale of the 90% shareholding in the Indian company falls within the scope of the Participation Exemption, therefore the capital gain derived from the sale of the shareholding should be exempt from tax under article 12(1)(u) of the ITA which is applicable to income and or capital gains derived by a company registered in Malta from the disposal of a participatin holding. The distributable profits should be allocated to the Final Tax Account of Families Limited (hereafter “FL”). The anti-abuse provision is not further discussed in this scenario, as it is only applicable to the receipt of dividends.

2) A donation is included as part of the definition of a transfer. Therefore, the donation is treated as a transfer and as such for capital gains purposes. Under Article 5(1)(a)(ii) of the ITA, the transfer of securities falls within the scope of a chargeable asset for capital gain. As the shares have been donated at nil consideration, the gains shall be calculated in accordance with article 5(3) of the ITA. The shareholding represents a participation holding for FL, therefore will be exempt under article 12(1)(u) of the ITA.

Furthermore, the will only be subject to Duty on Documents and

Transfers in case it is deemed to be made of use in Malta or executed in Malta.

The donation could be considered as an advance to Ms A and as such be taxed under article 46 of the ITA.

3)A donation is included as part of the definition of a transfer. Therefore, the donation is treated as a transfer and as such for capital gains purposes. Under Article 5(1)(a)(ii) of the ITA, the transfer of securities falls within the scope of a chargeable asset for capital gain. As the shares have been donated at nil consideration, the gains shall be calculated in accordance with the rules set out for the transfer of a controlling interest. The shareholding represents a participation holding for FL, therefore will be exempt under article 12(1)(u) of the ITA.

Furthermore, the will only be subject to Duty on Documents and Transfers in case it is deemed to be made of use in Malta or executed in Malta.

4) The provisions of article 5(1)(a)(ii) shall not apply to gains or profits relating to the transfer of shares listed on the New York Stock Exchange as it is a stock exchange which is recognised by the Commissioner for Revenue. Therefore, the donation of the shares will be exempt from capital gains under article 5 of the ITA.

5) A transfer of a emphyteusis or sub-emphyteusis falls within the definition of transfer under article 5 of the ITA, therefore the transfer of the temporary emphyteutical will fall within the scope of capital gains under article 5.

6) The transfer of fixed assets does not fall within the “claws” of article 5 of the ITA. Unlike article 4, article 5 is not a catch all. Therefore, subject to article 24 of the ITA, FL should draw up a balancing statement to determine the tax values of the assets subject to wear and tear under article 14(1)(f). The balancing statement will either result in a loss on disposal which will result in a balancing allowance (tax deduction) or a profit on disposal which will result in a balancing charge (taxable income).

The balancing statement is calculated as follows:
Sale price/consideration received on sale of assets less the cost of the asset less the wear and tear claimed on the fixed assets.

7) The transfer of the trademark does not give rise to a “royalty”, but is treated as the transfer of intellectual property and is charged to tax under article 5(1)(a)(ii) of the ITA.

The transfer of intellectual property is not a dutiable documents, therefore not subject to Duty on Documents and Transfers.

8) The redomiciliation will not give rise to any Maltese Income Tax consequences.

9) The cross-border merger does falls outside the scope of Maltese tax as the transaction has been entered into between two non-resident companies.

10) A liquidation will fall within the scope of capital gains tax under Article 5 of the ITA, since a transfer includes a liquidation of shares.

11) A donation will fall within the scope of capital gains tax under Article 5 of the ITA. However, due to the fact that the patent is transferred from FL to Malta Ltd, the exemption in terms of article 9(i)(b) shall apply. Ms A is the shareholder of both companies and as such it shall be deemed that no loss or gain has arisen from the transfer of the patent.

12) The donation will be charged to tax under article 5 of the ITA.

Answer-to-Question- 4

Question 4
Part B

1)
Although Ms Dalia acquired Maltese citizenship, she doesn’t spend more than 183 days per calendar year in Malta, therefore Ms Dalia is not a resident in Malta. Furthermore, Ms Dalia purchased a property in Malta, but she only spend three months each year in the apartment, therefore it is fair to say that Ms Dalia is not residing in Malta on a permanent or indefinite basis and as such is not ordinary resident in Malta. Lastly, Ms Dalia is not domiciled in Malta by origin and has no intention of making Malta her permanent home, therefore Ms Dalia is not domiciled in Malta.

However, Ms Dalia can be considered a permanent resident of Malta, as she has the right of the Free Movement of European Union. Consequently, Ms Dalia will be taxed under Article 56(10) of the ITA.

The salary and dividend has been paid by/distributed from a non-resident company, therefore the income will be subject to income tax at 15%.

However, should Ms Dalia open a bank account, and receive employment income and dividend income, the income will not be derived from Malta, hence still taxable at 15%.

2)
Ms Dalia is a permanent resident in Malta and as such subject to a minimum tax at 15% on income derived from foreign sources and subject to a progressive rate of tax starting at 15% and rising to 35% on all income derived in Malta.

The salary will be taxed in Malta if it can be said that Ms Dalia performed her duties whilst being present in Malta. As such, and subject to the treaty with the Netherlands, the income will subject to Maltese income tax at the progressive rates. The dividend will be subject to tax at 15%.

The participation does not apply to individuals, since it is only applicable to companies registered in Malta who derives capital gains or dividends from a participating holding.

The flat-rate foreign tax credit is also specifically applicable to a company, therefore Ms Dalia is not eligible for the flat-rate foreign tax credit.

3) The capital gain will be subject to tax in Malta at 15%. The capital gain will be calculated in accordance with the rules set out for the disposal of a controlling interest. The transfer is deemed to be made at the higher of the consideration and the market value of the shares.

4)
The sale of the apartment will be subject to tax in Malta. As Ms Dalia is a non-resident, she will have the option to opt out of the Property Transfer Tax of Article 5A and be subject to capital

gains tax of article 5 of the ITA. Depending on the facts, if Ms Dalia resided in the house for at least three years, the capital gain will be exempt in terms of article 5(5) of the ITA.

5) Trading profits arise in the country where the trading activity takes place. Considering that Ms Dalia trades cryptocurrency in Malta, the income from the trading activity will be deemed to arise in Malta, therefore taxable in Malta at the progressive rate starting at 15% and going up to 35%.

Answer-to-Question- 7

1) The rental payments will not be deductible for income tax purposes for ABC Ltd since it has not been incurred wholly and exclusively in the production of income.

The rental payments should be treated as an advance to a shareholder (Mr Vella) in terms of Article 46, as it is a payment made by a company on behalf of Mr Vella the shareholder. The payments made will be/should be treated as a dividend to Mr Vella.

2) The wear and tear allowances should not be allowed as a deduction for ABC Ltd as the furniture and fixtures are not part of the permanent employment of the business.

Furthermore, in accordance with Rule 2 FBR, deemed fringe benefits can exist in the case of an employer - employee relationship. Although Mr Vella is not an employee, he is the holder of an office which includes specifically a director, holder of more than 5% of the shares. Therefore, in this case, the use of the furniture by Mr Vella will be considered a category 2 benefit and the benfit is calculated as 12% of the higher of the market value or cost of the furntiture and fittings.

3) As mentioned in section 2, Mr Vella falls within the scope of the Deemed Fringe Benefit which is a taxable charge. The use of a company motor vehicle is a category 1 fringe benfit as it is a passenger vehicle. As the cost of fuel and maintence is borne by

ABC Ltd, it will also form part of the fringe benefit.

The wear and tear is deductible for ABC Ltd in terms of Article 14(1)(f), whilst the fuel and maintenance costs are also considered general deductions.

4) The management fee will be deductible for income tax purposes for ABC Ltd.

5) The school fees will be considered as a category 3 fringe benefit for Mr Vella, but he should be able to qualify for an income tax deduction based on whether the school fee is paid to a school listed by the Commissioner.

The school fees have not been incurred wholly and exclusively in the produciton of income, hence not an eligible expense for ABC Ltd.

6) The interest expenses are not deductible as they relate to the improvement of capital assets. However, a wear and tear deduction can be claimed in terms of article 14(1)(f) or if it relates to repairs it can be claimed in terms of article 14(1)(c) of the ITA.

7) Rule 4 of the FBR recognises the indirect grant of benefits and it is determined that although the salary is paid to Mr Vella's wife, the income shall be deemed to be provided to Mr Vella. Therefore, the salary paid to Mr Vella's wife will be charge to tax by Mr Vella.

The expenses are not deductible for ABC Ltd.

Answer-to-Question-8

The term permanent establishment is not defined in the ITA, but Article 5 of the OECD Model Convention does provide a definition.

For the purposes of the convention, a permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The term includes specifically a place of management, a branch, office, a factory, workshop etc.

The definition of a permanent establishment is of utmost importance as it has impacts on the jurisdiction to tax. If it is determined that a permanent establishment has been established, the income derived for the permanent establishment shall be taxable in the country where the permanent establishment is created.

The term PE is especially important for the provisions of article 12(u)(2) as the scope for the participation exemption has been broadened to include the income which is attributable to a PE situated outside Malta.

Furthermore, the term PE is especially important for the provisions of article 12(1)(c) of the ITA where interest and royalties derived by non-residents are exempt from tax in Malta. The inclusion of the PE is important to note as the exemption has

an avoidance provision which determined that the income derived by non-resident shall not be exempt in Malta if a PE exists in Malta or where the interest or royalties paid are not connected with a PE.

The VAT Act refers to a Fixed Establishment and it is important for the determination of place of supply. The Third Schedule of the VAT Act determines that:

a) The place of supply of services to a taxable person acting as such shall be the place whereh tehat person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where the has established his business, the place of supply of those services shall be the place where that fixed establishment is located.

b) The place of supply of services to a non-taxable person shall be the place where the supplier has established his business. However, if those services are provided to a fixed establishment of the supplier located in a place other than the place where the has established his business, the place of supply of those services shall be the place where that fixed establishment is located.

Consequently, the terms Permanent Establishment and Fixed Establishment are important as it determines the jurisdiction to tax albeit for income tax or VAT purposes. However, we do note significant differences, as for the definition of the PE, the tax will be charged in the country where the activities have taken place, whilst for VAT we do not that the place of supply can

either be in the country providing the service or receiving the services.

The rules have specifically been implemented so the tax base of jurisdiction are treated fairly and the sovereignty of nations are not undermined. In the days of globalisation, the clear definitions are required.