

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2022

MODULE 2.07 – MALTA 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. Super Holdings Malta Ltd (SHML) is a company that was incorporated in Malta during 2008. The shareholders of SHML are two individuals, both of whom are neither domiciled in Malta nor ordinarily resident in Malta. SHML does not own or occupy immovable property in Malta, and is not a property company. The Memorandum of Association of SHML incorporates a clause which empowers it to receive income which would be allocated to its Foreign Income Account.

SHML holds several investments and, during the relevant year of assessment, received the following income:

- a) Bank interest derived from a Swiss bank account, received in its Maltese bank account;
- b) Bank interest derived from a UK bank account, received in its Swiss bank account;
- c) Profits allocated to its permanent establishment in Italy;
- d) A capital gain derived from the transfer of an investment property in Belgium;
- e) A dividend from a company resident in the EU in which SHML holds 70% of the equity shareholding. The EU company claimed a deduction for the dividend paid;
- f) A dividend from a non-EU resident active trading company in which SHML holds 90% of the equity shareholding. The non-EU resident company claimed a deduction for the dividend paid;
- g) A tax-exempt dividend received from a letterbox company resident in a low tax jurisdiction situated outside the EU. SHML holds 100% of the equity shares in the letterbox company, and the letterbox company's income consists entirely of passive interest income;
- h) Compensation received from SHML's insurance policy, in connection with negligent investment advice that was given to the company which resulted in a loss of capital to SHML;
- i) A capital gain derived from the sale of intellectual property registered in the US state of Delaware;
- j) A capital gain derived from the sale of SHML's 1% shareholding in an Algerian company held since 2010, which is an investment worth €500,000;
- k) A dividend derived from a Libyan company in which SHML has held 4% equity shares since 2012, which is an investment worth €1,000,000;
- l) A commission received from the sale of an apartment situated in London. The commission was received in cash and is held in SHML's safe deposit box in Switzerland.

You are required to determine the Maltese income tax treatment of each income stream, referring to whether each stream is within the scope of income tax, the relevant tax account allocation, and eligibility for the participation exemption or other relevant exemptions. (25)

2. Evita Malta Ltd (EML) is a company that was incorporated in Malta during 2000. Its sole shareholder is Ms S, an individual who is both ordinarily resident and domiciled in Malta. EML employs five employees, all of whom are based in Malta and are resident in Malta for tax purposes.

As well as owning five rental properties in Malta, EML is also the sole shareholder of Diversions Ltd, a brass-plate letterbox company resident in a low tax jurisdiction outside the EU which does not charge any tax on foreign source rental income. Diversions Ltd owns rental properties in Portugal, Italy and Spain, which it commercially exploits. The directors of Diversions Ltd are two of EML's five employees, and take all decisions pertinent to Diversions Ltd from Malta. Diversions Ltd always ensures that it pays all taxes due in Portugal, Italy and Spain respectively, and all tax compliance obligations are attended to by EML's employees in Malta.

Diversions Ltd has never declared a dividend; instead, its substantial earnings from its properties in Portugal, Italy and Spain have been retained in an offshore bank account. In Malta, EML has not opted for the final withholding tax regime in respect of its rental income. All of EML's profits have invariably been absorbed by interest expenditure, salaries and wages and capital allowance. Indeed, EML's most recent tax return reported a tax loss brought forward and wear and tear allowances brought forward from previous years.

Ms S is hoping to sell EML and has recently approached Mr N, a retired international entrepreneur and the sole shareholder of Investments Ltd, a highly profitable Maltese resident property leasing company that was incorporated in 2017. Investments Ltd does not qualify for a duty exemption determination in terms of Article 47 of the Duty on Documents and Transfers Act. On initial inspection, Ms S's offer to Mr N appears to be quite attractive, proposing the sale of her shares in EML in return for an amount equivalent to the combined value of all assets held by her companies plus an additional €5 million (a sum which is roughly equivalent to Diversions Ltd's projected annual income).

Mr N is seriously considering purchasing EML through Investments Ltd, and has approached you with some questions relating to the tax implications of the potential acquisition.

You are required to answer the following questions, explaining each of your answers with reasoning:

- 1) **Will Mr N be liable to pay any Maltese taxes on the acquisition of EML, and how will any Maltese tax be calculated?** (4)
- 2) **Upon acquisition, are there any ways in which Investments Ltd would be able to avail itself of EML's accumulated tax losses and capital allowances?** (5)
- 3) **Does EML's group structure create an inherent tax risk? If so, how might this risk have been increased by the entry into force of S.L. 123.187 (the *European Union Anti-Tax Avoidance Directives Implementation Regulations*)?** (8)
- 4) **In the event of a change in dividend policy, how will EML be taxed in Malta on any eventual dividend distributions from Diversions Ltd? Are there any legitimate opportunities for tax mitigation?** (4)
- 5) **How would a sale of the shares held by EML in Diversions Ltd be treated for Maltese tax purposes?** (4)

Total (25)

PART B

You are required to answer THIS question.

3. Mr Weal is a retired entrepreneur who acquired Maltese Citizenship via the Citizenship by Investment Programme in 2017. He is ordinarily resident in Malta but not domiciled in Malta.

Mr Weal recently decided to unwind his commercial interests and dispose of most of his belongings to relatives and friends. He is considering making the following donations:

- a) A cash donation of €15,000 to the Malta Community Chest Fund Foundation;
- b) A cash donation of €50,000 to an approved philanthropic institution;
- c) A donation of a warehouse in Malta to an approved philanthropic institution;
- d) A donation of his home in France to his son;
- e) A donation of his home in Malta, which he bought in 2016, to his daughter;
- f) A donation of his shares listed on the Malta Stock Exchange to his son;
- g) A donation of his shares listed on the New York Stock Exchange to his daughter;
- h) A donation of 50% of his equity shares in his Maltese resident company to his son;
- i) A donation of 50% of his equity shares in his Italian resident company to his daughter;
- j) A cession of his tenancy rights on a shop in Malta, in favour of his girlfriend.

You are required to determine the Maltese Income Tax treatment of each of the proposed donations.

(20)

PART C

You are required to answer TWO questions from this Part.

4. Food Ltd is a company registered in Malta which used to run a pizzeria under an international agency agreement.

Food Ltd has assigned its exclusive agency to a third party established in Malta at a nil (zero) consideration, and has also assigned its tangible fixed assets to a related Group company established in Malta at a nil consideration. The related group company will use the assets for the purposes of its business, and is registered for VAT purposes.

A detailed breakdown of the cost of acquisition, year of acquisition and description of tangible assets is as follows:

<u>Asset</u>	<u>Year of acquisition</u>	<u>Original cost (€)</u>	<u>Minimum number of years over which such assets are to be depreciated</u>
Computers	2017	1,000	4
Commercial motor vehicles	2018	100,000	5
Non-commercial motor vehicles	2019	50,000	5
Office furniture	2020	1,500	10

Food Ltd had claimed wear and tear allowances on the fixed assets being transferred.

You are required to explain the tax concept of ‘plant and machinery’ as applicable to a catering company, and determine any Income Tax, VAT and Duty on Documents and Transfers consequences of the transfers considered above, including a brief explanation of the applicable tax compliance obligations. (15)

5. Drilling BV, a company tax resident in the Netherlands, aims to derive gains through a production sharing contract, The contract was granted by the Government of Malta by way of licence in accordance with the provisions of the Petroleum Production Act and the Continental Shelf Act.

Services BV is a subsidiary of Exploration BV and has entered into a contract with Drilling BV under which Services BV shall render services to Drilling BV. Services BV is also tax resident in the Netherlands.

Drilling BV has formally registered a branch in Malta. Services BV has not registered a branch in Malta, but it is anticipated that one of Services BV’s semi-submersible oil rigs will be working in Maltese territorial waters to provide drilling services for more than 730 days.

You are required to explain the Maltese tax treatment of Drilling BV and Services BV, with reference to the double tax agreement between Malta and the Netherlands, the Income Tax Act, the Duty on Documents and Transfers Act, and the VAT Act. (15)

6. **You are required to explain the tax advantages that may result from fiscal consolidation.** (15)

7. **You are required to explain the relevance of the tax judgment of the European Court of Human Rights in the *Busuttil v. Malta* case.** (15)