Answer-to-Question-_1_

Part 1)

A transfer of business upon re-domiciliation of Brit Co to Malta,will not trigger any taxable events in Malta. It would be important for Brit Co to assess ATAD 1 legislation in terms of exit taxation however given that Brit Co will be transferring outside the UK to Malta, if any exit tax is triggered then this will definitely be from a UK perspective rather than a Maltese perspective.

Upon transfer of business and redomiciliation to Malta, the company would need to be registered with the Maltese business registry and would be deemed therefore as an 'OC' Company - hence being a Maltese tax resident but not domiciled company. As a result of such tax status, the company will be subject to taxation on a source and remittance basis:

Taxable on all Malta source income and capital gains
Taxable on all foreign source income which will be remitted to Malta
Not taxable on any foreign source capital gains **even** if remitted to Malta

In view of the above, upon registration, Brit Co would need to submit an annual tax return pertaining to all its income and expenses generated and incurred and would be subject to Maltese tax at the standard rate of 35%.

Further to the above and in view of the fact that it's shareholder is a US Co which is not resident and not domiciled in Malta and such US CO is ultimately owned by non-resident individuals, the US Co may be able to utilise the Maltese tax refund system on any tax which is suffered here in Malta.

Part 2)

a) *Royalties, interest and dividends which BritCo will pay to USCo, post redomiciliation*

Ans: Royalty income and interest income will be subject to a tax deduction in Malta of any expenses which were incurred in the production of such income. Interest expenses will be subject to a limitation in accordance with ATAD 1 Interest Limitation Rule. On the other hand dividend income will be subject to no further tax in the US and USCo will be able to claim a refund on the tax suffered on such distribution of dividends.

b) *any capital contribution which US Co will inject in BritCo, post redomiciliation*

Ans: Capital contributions will not have any further tax implications here in Malta and will be allocated to the 'Capital Contribution Reserve' in which for tax purposes will be deemed as a non-distributable reserve.

c) *any trading income which Brit Co will receive, post redomiciliation*

Ans: Trading income generated by Brit Co, if remitted to Malta will be subject to Maltese Tax at the rate of 35% and will be allocated to the Maltese Tax Account. Upon a dividend distribution, US Co would be entitled to claim a refund on such income utilising the 6/7ths refund (hence effective tax rate of 5%).

d) *an eventual transfer of BritCo's trademark licensing agreement to a Japanese company that is fully owned and* *controlled by US Co.*

Ans: Given that both companies are part of the same group (US Co holds 100% of the share capital in both Brit Co & Japan Co), then such companies would be deemed to form part of a group in accordance with Article 5(9) of the income tax act. Hence a transfer of IP (which falls within the remit of Article 5) will not be subject to any tax on such transfer of IP. Should 5(9) not have been applicable, such transfer of trademark would have been taxable at the rate of 35% on the capital gain.

e) *an eventual transfer of Brit Co's passive loan interest portfolio to a BVI company that is fully owned and controlled by US Co*

Ans: No Maltese Income tax implications on such transfer of loan interest portfolio

f) *an eventual shift of Brit Co's management and control functions from Malta to Scotland*

Ans: Given that Brit Co's effective management and control functions will be shifted to Scotland, there is substantial argument from a Scottish perspective that Brit Co will be deemed as a Scottish resident company and therefore the company would be taxable on a source basis only here in Malta. It is worth considering ATAD 1 Exit Taxation rules in this case as it may constitute as a 'transfer of business'

g) *an eventual liquidation of Brit Co, occurring after the redomiciliation and shift in management and control*

Ans: There will be no income tax implications in terms of the actual liquidation of the company. In the event of a distribution of any outstanding profits, the same treatment pertaining to a dividend distribution must be taken into consideration.

Part 3)

Malta caters for a Group Loss Relief in the event that a company has trading losses incurred for the year and such losses may be ‘forefeited’ to company members forming part of the same group subject to certain conditions. It is worth noting, if in this case Brit Co has tax losses brought forward from previous years, the group relief legislation clearly states that such losses ‘forefeited’ must be incurred in the **same year** of when these are generated. Therefore, any trading losses brought forward from the UK as a result of the redomiciliation, will not be able to be claimed by the US Co.

Notwithstanding the above, as highlighted earlier, Brit Co would be taxable on a source and remittance basis and in the event that all of its trading income generated is remitted to Malta, such profits will be allocated to the Maltese Tax Account. This is important as this will have implications on the applicability of the Maltese Refundable Tax Credit System. Should Malta tax have been suffered on such trading income, the US Co upon a dividend distribution would be able to claim a refund. Tax Refunds vary from 100% to 6/7ths. In this case, should we assume that Brit Co’s income will be solely that derived from a trading nature all the profits would be allocated to the Maltese taxed Account and would be subject to the 6/7ths Refund, effectively meaning that the group would have suffered an effective tax rate of 5% on the trading income generated. All of the above, would be applicable subject to the following:

The beneficial owners of US Co are not Maltese resident and domiciled individuals

US Co is registered as a shareholder which will be entitled to claim a refund for tax refund purposes

Brit Co will remit all its Malta Trading Income to Malta and suffer tax on such income

A dividend distribution from Brit Co to US Co occurs

Further to the above, Malta has transposed Fiscal Consolidation Rules. Essentially such rules release the group from the 'burden' of paying tax at the corporate tax rate of 35% and claiming a refund on such tax suffered on the basis of a 'deemed dividend distribution'. In order to be able to register as a group the following process would need to be conducted:

Brit Co is registered as an OC Company here in Malta

Following registration of Brit Co, the director/tax practitioner of the group notifies the Commissioner for Revenue that US Co will be registering as a 'parent entity' or 'principal taxpayer' for fiscal consolidation purposes. Upon registration a tax number is provided to US Co.

In accordance with the legislation, both companies must have their year-ends beginning and ending on the same dates.

Brit Co must naturally qualify as a 95% subsidiary of US Co (given that US Co holds 100% of the shares in Brit Co, it is safe to say that this requirement is satisfied).

Brit Co as the company which was resident in Malta prior to consolidation must ensure that it does not have any pending liabilities with the Commissioner for Revenue for FSS, VAT & also Income Tax purposes

Should all the conditions referred to above be satisfied, US Co & Brit Co would be able to register as a fiscal unit for Fiscal Consolidation purposes and would be subject to the effective tax rate of 5% immediately.

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

Answer-to-Question-_2__

Part 1)

Mr. Riches

Mr. Riches is an individual who is currently deemed as both resident and domiciled in Canada. Upon shifting residence from Canada to Malta, given the fact that he will reside in Malta for 10 years but also will probably reside in Malta for more than 183 days in Malta, he will be deemed as tax resident in Malta. On the other hand, given that his **intention** is to leave Malta and reside in France then the domicile of choice will not be deemed as that of Malta. Domicile is not found in Maltese Tax Legislation however its a UK Law concept. It is quite hard for an individual to shift his domicile from one country to the other and it normally depends on the intention of the individual. Given that Mr. Riches' intention is to remain resident in Malta for 10 years and eventually leave Malta to France, he will be deemed as an individual who is resident but not domiciled for Maltese tax purposes. It is worth noting, that in the event that during this 10-year period Mr. Riches marries Mr. Borg, there could be an argument for Maltese tax authorities in terms of the Domicile by the operation of law. There could be an instance where Mr. Riches upon marriage (having married an individual who is both Resident and Domiciled in Malta) would be deemed also as an individual who is both Ordinary Resident and Domiciled in Malta.

Mr. Borg

Mr. Borg is an individual which was not resident in Malta however is a domiciled individual here in Malta. Given that he will now shift his residence to Malta he will be deemed as an individual who is both resident and domiciled for Maltese tax purposes. For the time being, there is no further information with respect to Mr. Borg's intention after the lapse of the 10-year period and therefore the domicile of origin (hence Malta) takes precedence in this case.

Part 2)

Pension Income

Ans: The pension income received by Mr. Riches given that he is deemed as a resident but not domiciled individual, he would be subject to tax on a source and remittance basis hence the pension income remitted to a Maltese bank acount will be subject to the progressive rates of tax here in Malta. In the event that any foreign tax is suffered on such pension income, Malta may grant a relief on foreign tax suffered subject to proper evidence kept by Mr. Riches

Interest Income

Ans: Given that he will be taxable on a source and remittance basis and such income has not been remitted to a Maltese bank account, then Malta has no taxing rights with respect to such income. It is worth noting that through an update in Maltese legislation pertaining to resident but not domiciled individuals, such individuals would be subject to a minimum taxation threshold of EUR5,000 per annum. Such interest income would be subject to this check if Mr. Riches does not pay tax of more than EUR5,000 in Malta.

Securities Listed on a Non-Malta Stock Exchange

Ans: Such profits will not be treated as capital gains but as trading profits given that Mr. Riches is actively trading in such portfolios. Any income which is remitted to Malta will be subject to Maltese tax in line with the progressive rates of taxation. Should such income not be remitted to Malta, such profits will be included in the minimum taxation threshold test.

Part 3)

To: Mr. Riches & Mr. Borg
Subject: Advice Pertaining to taxation scenarios presented
Date: 09/06/2021

a) *Tax Saving Opportunities & Deduction of fees paid to Mother's Elderly Home*

Given that Mr. Riches is deemed as an individual who is resident but not domiciled in Malta, Mr.Riches will be subject to tax on the following:

Taxable on all Malta source income and capital gains
Taxable on all foreign source income which will be remitted to Malta
Not taxable on any foreign source capital gains **even** if remitted to Malta

In addition to the above, before delving further into some tax saving opportunities that may exist in Malta, it would be worth mentioning that a further introduction into Maltese legislation has been transposed with respect to Maltese resident but not domiciled individuals. If in the event that Mr. Riches will be subject to tax in Malta amounting to less than EUR5,000 a 'test' would need to be conducted. Such test states that if in the event Mr. Riches is in receipt of foreign income of more than EUR35,000 (or an amount equivalent to the corresponding exchange rate in view of different currencies), then you would be liable to 'top-up' the tax incurred on Maltese remitted income by the minimum taxation threshold of EUR5,000.

Notwithstanding the above, Malta does offer certain tax saving opportunities in this respect. Given my understanding that you would be in receipt of pension income here in Malta, it is worth considering Malta's Retirement Program. Subject to certain qualifying conditions catered for in such program, rather than filing a yearly income tax return and assessing the 'Minimum Taxation Threshold Test' you would be subject to an immediate minimum taxation without the need to assess the foreign income derived from your end.

With respect to the fees paid to your Mother's Elderly Home, a deduction for such expenses does exist in the Maltese legislation, however it is worth noting that such deduction is applicable solely with respect to Maltese Retirement homes found here in Malta.

b) *Taxation implications on Malta Government Pension. Deductions available*

The Malta Government Pension in which Mr. Borg derives would already be subject to a final tax suffered at the level of the Government entity and no further tax implications will arise on such pension income derived by Mr. Borg.

Notwithstanding the above, the alimony payments that Mr. Borg would be incurring would in fact be able to be claimed as a deduction against the income that he will be personally generating. On the other hand, the fees paid by Mr. Borg on behalf of his son's secondary school in Switzerland would not be able to be deducted as the legislation states that such deduction is applicable to Maltese schools.

c) *Change of tax status in the event of a marriage*

In the event where Mr. Riches marries Mr. Borg (or will register as a civil union), upon marriage (having married an individual who is both Resident and Domiciled in Malta) would be deemed also as an individual who is both Ordinary Resident and Domiciled in Malta. This is because, a third concept of Domicile (Domicile through the operation of the law) could be applicable in this case. Naturally, as highlighted previously, it is very hard for one to shift the domicile of the individual, however in the event that such civil union occurs and it is challenged from the tax authorities, Mr. Riches could be deemed as a Maltese resident and domiciled individual and will therefore be subject to tax on a worldwide basis.

d) *Acquisition of a house in Malta. Selling of a house in Malta to a third party or donating the house to the son*

Upon acquisition of an immovable property situated in Malta, Mr. Riches & Mr. Borg would incur stamp duty on the acquisition of such property at the rate of 5%.

Further to the above, upon selling the immovable property Mr. Borg & Mr. Riches will be subject to capital gains tax here in Malta. One would need to assess the date of initial acquisition by the couple but in the event that such property was acquired now (in 2021) then the rate of tax suffered on the transfer of the property will be that of 8% on the Transfer Value of the property.

Notwithstanding the above, in the event that the immovable property is instead donated to Mr. Borg's son, such transfer will qualify as an exemption from capital gains. It is worth noting however, that while it is exempt from Mr. Borg's & Mr. Riches' end, Mr. Borg's son will incur duty of 3.5% on such donation of property.

e) *Inheritance of all assets held by Mr. Riches*

Upon inheritance of both the securities held and equity in the house, Mr. Borg will incur 12% of inheritance tax in this respect. On the other hand, no tax will be incurred on the inheritance of the cash at bank.

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

Answer-to-Question-_3__

Dividend Received from Italia Srl

The dividend received from Italia Srl **will not** be subject to the Participation Exemption given that PML solely holds 2% of equity shares (hence not satisfying the 5% threshold) and although the market value is quite high (EUR5M), it is worth noting that in order to qualify as a participating holding entity, the initial acquisition value must be taken into consideration rather than the current market value of the company.

Capital Gain on the transfer of shares held in BL

The capital gain **will** be subject to the Participation Exemption. This is because capital gains would only need to satisfy the definition of participating holding (without the need to delve into the anti-abuse measures) and therefore given that PML held 100% shares in BL (hence exceeding the 5% threshold) such capital gain will be subject to PEX.

Profits and interest income derived from a Joint Venture in Angola

The profits generated by PML **will** be subject to the Participation exemption/Branch exemption given that it has a fixed place of business in Angola hence pointing to the fact that it has a permanent establishment in Angola.

On the other hand, the interest income **will not** be subject to the Participation Exemption in view of the fact that such interest is deemed of a passive nature and falls out of the scope of the Participation exemption.

Dividend and interest income from Espana LLC

Given that the dividend income has been subject to foreign tax and was also treated as a tax deductible expense in the Espana Accounts is independent from the treatment of the dividend income received by PML. Such dividend will be subject to PEX as it has an equity holding of 99% in Espana LLC

On the other hand, the interest income **will not** be subject to the Participation Exemption in view of the fact that such interest is deemed of a passive nature and falls out of the scope of the Participation exemption.

Unrealised Gain

The unrealised gain will not be deemed as taxable gain given that it is unrealised in nature and therefore will fall out of scope of PEX

Dividend from UK LLP

In this scenario a hybrid mismatch in line with ATAD 2 Rules is created. UK treates such LLP as a transparent entity while for Maltese purposes such entity has been treated as a company and hence fiscally opaque. In view of this, while in principal PEX would be applicable should UK LLP had been treated as fiscally opaque in the UK, Malta in line with ATAD 2 Rules would need to tax such dividend received irrespective of the applicability of PEX given that UK LLP is fiscally transparent and a hybrid mismatch exists.

Dividend from a collective investment vehicle

The dividend from a collective investment vehicle would be subject to PEX given that PML’s units have both voting rights and profit participation rights.

Dividend distributed out of UA of a Maltese CIV

Such dividend distribution will fall out of scope of PEX and such dividend distributed will be allocated to the UA of the company.

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

Answer-to-Question-_4__

Part 1)

HL & MTL - Tax Compliance Obligations

Before registration of a fiscal unit in accordance with the Consolidated Group Rules, an assessment into the underlying criteria would need to be conducted prior to registration.

Both companies must have their year-ends beginning and ending on the same dates.

MTL must qualify as a 95% subsidiary of HL. In the event that HL holds 95% up to and including 99% of the shares in MTL, an authorisation in writing from the minority shareholder must be obtained, stating that the minority shareholder approves fiscal consolidation, before registering.

Both MTL & HL as individual companies must ensure that they do not have any pending liabilities with the Commissioner for Revenue in terms of FSS, VAT & Income Tax

Should the above be satisfied, HL will register as the principal taxpayer of the group and only HL as the principal taxpayer would need to file an income tax return for the group (Consolidated Tax Return). Apart from the Consolidated Tax Return, the Commissioner has also added a ’Supplementary Document’ which would also need to be prepared in unison with the Consolidated Tax Return.

While HL in principle will be liable for tax purposes (as the principal taxpayer), the legislation states that all entities forming part of the Consolidated Group will be jointly and severally liable for tax purposes.

It is worth noting, that from an accounting perspective an additional consolidated set of financial statements would need to be prepared for the purposes of the Consolidated Group Rules.

Calculating the Effective Tax Rate

The Effective Tax Rate of the fiscal unit is catered for through Rule 6(2) of the Consolidated Group Rules in which it states the following:

35% - (The refund amount that would have been claimable by the group/Chargeable Income of the Fiscal Unit)

Depending on the above calculation, the effective tax rate of the fiscal unit would have been calculated any income generated by the group (apart from those income streams which are deemed as 'ignored transactions') would be subject to such effective tax rate.

In view of the nature of the structure of HL & MTL, given that HL derives solely dividend income - such income (unless relates to profits generated prior to consolidation) will be deemed as an ignored transaction and no chargeable income will be shown in HL. On the other hand, the operating income derived by MTL will be **deemed to have been distributed to HL** and will be subject to the effective tax rate (in this case 5%). Naturally should the group derive further streams of income which could result in different refunds (namely passive income), this will have an impact on the above referred to formula.

Part 2)

Upon registration of a fiscal unit, any profits derived by MTL would now be deemed to have been distributed by the MTL. In view of such deeming provision,the Refundable Tax Credit system will no longer be applicable until both companies remain forming part of the fiscal unit. It is worth noting however, that in the event that MTL still has some profits which relate to profits prior to consolidation, the 'old' system would be applicable in this case:

A Dividend Distribution from MTL to HL would need to be conducted

Such distribution must be highlighted in the supplementary document of MTL

A Refund Claim Form would need to be prepared and filed with the International taxation Unit

It is important to note however, that MTL must maintain and update (where applicable) the shareholder registration for refund purposes. In the event that HL will no longer be registered as a shareholder for refund purposes, the consolidated group rules will not be applicable.

Part 3)

Capital Allowances

Any capital allowances which are unutilised and carried forward from previous years, subject to an election, may be either kept in abeyance by the Transparent Subsidiary (MTL) and hence the group will not utilise such losses or they can be carried forward and absorbed by the principal taxpayer.

On the other hand, capital allowances incurred during the year, subject to substance requirements, may be deemed to have been incurred in the production of the income of the principal taxpayer and therefore may be utilised against the chargeable income of the group.

Chargeable Income

The Chargeable Income of MTL will be deemed to have been absorbed by the Principal Taxpayer (HL) as if HL was generating and incurring the respective income and expenditure in order to generate the final chargeable income amount.

Tax Accounting

MTL

For the purposes of MTL as the transparent subsidiary of the group all the relative tax accounts will not be utilised and all the profits that MTL will generate will be allocated to the Untaxed Account. It is important to note this in the event of a dividend distribution out of such profits in the future. Such allocations will be highlighted in the Supplementary Document provided by the Commissioner for Revenue.

HL

On the other hand, HL's tax accounts will remain the same (FTA,FIA,MTA,IPA & UA) and all the income that was generated by MTL, as referred to above, will be deemed to have been generated by HL hence resulting in the fact that the tax accounts in HL will be prepared in line with normal tax accounting rules. In this event, given that MTL derives MTA income, such income will be reflected in the tax accounts of HL as the principal taxpayer.

It is important to note, any brought forward amounts prior to fiscal consolidation would need to be kept as they are (in the case of MTL), however with respect to HL the aggregate of each tax account pertaining to MTL and HL must be taken into consideration.

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

Answer-to-Question-_5__

Part 1)

Income Tax: In line with the Double Taxation Treaty with the UK, such transfer of shares will fall within the remit of where the alienator is resident. Therefore, such transfer of shares will be subject to Maltese tax at 35%

Duty: Out of scope

VAT:Out of scope

Part 2)

Income Tax: Out of scope for tax purposes in Malta

Duty:Out of scope

VAT: An assessment on the going concern of the company would need to be assessed in this respect given that Mask will be transferring its entire business to China. If applicable, no VAT implications

Part 3)

Income Tax: The donation of shares by Ms. Vella to her stepson will be subject to an income tax exemption and no tax will be suffered in this respect

Duty: Out of scope of duty

VAT:Out of scope

Part 4)

Income Tax: The redomiciliation from UK to Malta for Mask Limited will not trigger any taxable events here in Malta. However, an assessment pertaining to exit taxation would need to be considered from a UK perspective.

Duty:Out of scope

VAT:Out of scope

Part 5)

Income Tax: In the event of a liquidation of Mask Limited should Mask distribute any dividends to Ms. Vella, one would need to assess the tax suffered at the level of the UK entity. Ms. Vella would then need to declare such dividend received in her personal income tax return and would be subject to tax at Malta's progressive rates in her tax return. Malta would then be able to grant relief of tax suffered on such dividends abroad.

Duty:Out of scope

VAT: Out of scope