Answer-to-Question-___**1**

Company is domiciled in Malta since it was incorporated in Malta. Both of the shareholders are non-res and non-dom in Malta therefore are eligibile to claim refunds on the dividends distributed to them without incurring any further tax on the dividends. Important to point out that refunds are only eligible from the Malta Tax Account (MTA) and the Foreign Income account (FIA).

No mention of other companies related to the company therefore the group provisions are not applicable in this case. Also, no mention of the board of directors where it is being held, therefore I will be assuming that such board of directors - where management and control takes place will be held in Malta therefore the company is both Resident and Domiciled in Malta, subject to world wide basis of taxaiton.

Also told that it isn't a property company and that it can allocate to the FIA. We are told that during the year it received all of the following income from several different sources, which I will be explaining below.

For the **below answers**, whenever I am told that the company owns more than 5% of the equity shareholding, told that it is 70% and 90% in some of the examples, it will satisfy the defniition of a participating holding since it satisfies 1 of the 6 conditions and 1 is enough. Conditions of participating holding need to be satisfied to apply the participation exemption.

a) Such income is to be allocated to the FIA account. This is bank interest from a foreign bank account, not subject to the

exemption under 12(1)c) since it isn't from a person not resident in Malta. Taxed normally at 35% in the foreign income account. Not eligible for Participation exemption (PEX) since I understand that there is no Participation Holding in Switzerland. Also no foreign tax was deducted on such interest, therefore treaties not relevant in this case.

b) Allocated to the FIA account and taxable normal rates, 35%. I understand that the company is subject to world wide basis of income therefore still taxable. Again, understand that there is no participating holding in Switzerland, therefore the participation exemption does not apply.

c) It has a permanent establishment in Italy, therefore subject to Participation Exemption and such income is exempt, allocated to the Untaxed Account (UTA).

d) The investment property is in Belgium therefore not subject to capital gains in Malta, since the property isn't located in Malta. It is allocated to the FIA, taxed at normal rates, 35%. Participation exemption does not apply since there is no mention of having a participating holding in Belgium.

e) This is subject to participation Exemption since the participating holding (PH definition satisfied due to 70% equity shares) is resident in a territory of an European Union and thus satisfies one of the conditions in 12(1)(u)(i). Therefore such income is exempt and allocated to the Untaxed Account.

f) It is from a non-EU, therefore one of the conditions in 12(1)(u)(i) is not satisfied. However, I am told that it claimed a deduction for the dividend paid, if it is subject to foreign tax of at least 15%, then it still satisfies the conditions for participation exemption to apply as per 12(1)(u)(i). If it is less than 15%, and it does have more than 50% of its income dervied from passive interest or royalties (the participating

holding), then both of the conditions set out in 12(1)(u)(ii) must be satisfied - that is that the equity holding by the company registered in MAlta in the body of persons not resident in MAlta is not portfolio investment and that the amount of foreign deduction is at least 5%. Therefore, participation exemption applies and it is allocated to the untaxed account.

g) Participation exemption does not apply in this case, since it doesn't satisfy the conditions for participation exemption in 12(1)(u)(i) & 12(1)(u)(ii), no amount of foreign tax is due. This is allocated to FIA and taxed at the normal rates, 35%

h) I understand that such compensation is of a revenue nature. Therefore, allocated to the MTA since it arose here in Malta and taxed at 35%. Out of scope for participation exemption.

i) Capital gain of intellectual property situated outside Malta, will be allocated to the FIA and taxed at 35%. No mention that it was subject to foreign tax therefore, participation exemption does not apply and no mention that there is a participating holding in Delaware.

j) No mention of any foreign tax suffered on such capital gain. Since no foreign tax was suffered neither the conditions in 12(1)(u)(i) and 12(1)(u)(ii) were satisfied and therefore the participation exemption does not apply. Also the condition for a participation holding is not satisfied in the first place. Income allocated to the FIA and taxed at 35%.

k) Again the definition of a participating holding is not satified since none of the 6 conditions are satisfied. Investment must exceed EURO 1,164,000 for an uninterrupted period of not less than 183 days to have a participating holding. Participation exemption does not apply. Income is allocated to the FIA and taxed at 35%.

1) Participation exemption does not apply since there is no mention of a participating holding in London. The comission is foreign sourced, therefore allocated to the FIA and taxed at 35%.

Answer-to-Question- __2

EML company incorporated in Malta during 2000. It's sole shareholder is individual both resident and domiciled in Malta. It employs 5 employees, all of whom are based in Malta for tax purposes.

EML is the sole shareholder of Diversions Limited.A company resident in low tax jurisidiction outside the EU which does not charge any foreign source rental income. It owns rental properties in Portugal, Italy and Spain.

The place of managament of control for Diversions Limited is in MAlta, therefore such company is Res and non Dom in Malta.

Taxes are paid in Portugal, Italy and Spain respectively.

The earnings from Diversions Limited from rental properties are never declared as dividends, they are retained in an offshore bank account.

In Malta, EML, it didnt opt for the Final tax account, thus 31D not opted for.

Since no 31D, they took deductions on the income and all expenses absorbed the income.

Has tax losses carried forward from past year and also cap allowances from past years.

Mr S, the sole shareholder is looking to sell the company, EML, approached by Mr N. He is sole shareholder of Investments Limited, Maltese property leasing company, doesn't qualify for duty exemption.

Transfer from shares from Ms S To Mr N, capital gain of 5 million euro.

1) Mr N the person buying the shares of the company EML and thus being the sole shareholder instead of Ms S, doesn't have to pay capital gains, Ms S does. Mr N however will be liable to duty on tranfers. EML makes it a property company since it holds property in Malta, as a result the amount of duty charged is increased by 3 Euro, therefore amount of duty charged is 5 Euro for every 100 Euro of the amount or value of the consideration of the real value of the markeatable security, whichever is the higher.

2) Upon acquisition, EML and Investments Limited would be part of a group as per the group definition in ITA Article 16, since 51% ownership is satisfied. There are the group relief provisions, where companies can surrender losses by way of group relief to members of the group. However, to be able to surredner losses it is very important that both companies have the same accounting periods and both are resident in Malta. In adddition to this, surrendering accumulated tax losses is allowable only against the same source of income stream, for example if have a loss in the Malta Taxed account, it can only be used to offset income the Malta Taxed account of the other group company. While for capital allowances, they can't be surrendered to the other company, they will stay upon EML.

3) EML's group structure can indeed create an inherent tax risk.

We are told that EML does have an amount of tax losses being carried forward from previous years however we are not told the amount of losses being carried forward. Mr N could be buying the comapny with the main intetion for forming a group by having a company with a high amount of losses. In fact there is an article relating to such anti-avoidance in ITA article 19 where arrangements can't be made with the sole intention to reduce a company's tax liability. Also, having a lot of funds being untaxed in a low tax jurisidction outside the EU will lead to the implications for the Controlled Foreign Corporation (CFC) rules. Where if the controlling thresholds is exceed (50%), and satisfies the thresholds of accounting profits for the year by the subsidiary, then the profits of the subsidiary will be brought to tax here in Malta, so that no income will remain untaxed. CFC is checked every year for every company having subsidiaries in low tax jurisdictions.

4) Diversions Limited never declared a dividend and this can raise a number of issues, especially with regards to Article 43 of the ITA where certain undistributed profits can be deemed to be distributed except for the 2 cases mentioned in 43(1)(a)(i) and (ii).

Diversions is resident in Malta, therefore if it were to distribute dividends to EML a 35% tax charge would apply on such dividends. Any refunds on the distribution would still be incurring a 35% tax since the UBOs aren't non res and non dom in Malta. Important to mention however, that any income from the Immovable property account, no refunds can be claimed. Refunds only from the MTA and FIA. If it is in the business of renting properties situated in Malta, like EML, this is it's main source of income and therefore it is allocated to the MTA and not IPA.

5) We are now talking about a sale of shares held by EML in

Diversions Limited. Therefore, EML is selling Diversions Limited, a company which is Res non-dom.

Such transfer of shares, since the company is resident in Malta would be chargeable to capital gains on any profit made from such shares of the company.

Answer-to-Question-**_ Part B Question 3_**

Individual being an entrepreneur acquiring Maltese citizenship by Investment Program in Malta. Res and non dom, therefore subject to the remittance basis of taxation.

a) Part of the donation is cash free subject to capping while the rest is subject to taxation at the individual's normal rates.

b) No tax is due in such donation as per article 5(2)(e)(ii) of the income tax act. The donation is being made to an approved philantrophic instution and therefore it is exempt, no capital gains arise and so can be tax deducted from his income as it is allowable.

c)Donation of a warehouse to an approved philantrophic institution is exempt as per article 5(2)(e)(ii) from capital gains.

d) The house is situated in France, therefore out of scope of Maltese income tax treatment since the place of supply is in France. Assuming that such capital gain is not remitted to Malta.

e) Donation of home therefore to be classified as his own residence. 3 years have passed since bought in 2016 and must be transferred within 12 months of being vacant, therefore it is exempt under article 5(5)(b), no capital gains arise.

f) This is an exempt transfer from capital gains since such shares listed on the Malta Stock Exchange are exempt since the

Malta Stock exchange is recognised under the Financial Markets Act, assuming that they are not securities in a collective investment scheme, if were in a collective investment scheme, they were held in a prescribed fund.

g) The New York Stock Exchange is recognised too under the Financial Markets act, therefore such donation will be exempt too from capital gains. Since he is trading from Malta, activity is deemed to arise here but still exempt as mentioned above.

h) Such donation is exempt from capital gains since it is a transfer of securities to a direct descendant, his son.

i) The company is located in Italy, therefore out of scope for Maltese Income Tax purposes. Assuming that such gains are not remitted to Malta.

j) A girlfriend isn't a direct descendant and therefore will be subject to capital gains.

Answer-to-Question-**Part C Question 4**

Food ltd - runs a pizzeria. Assigned its tangible fixed assets to a related Group company established in Malta at nil consdieration. All registered for Vat purposes.

Related group company - therefore group provisions can apply. Related group company will be using the assets for its purpose of its business, the assets are given at a nil consideration.

Answer:

Wtih regards to the concept of plant and machinery, capital allowances can be claimed on the tangible assets which the company uses for it's production of income. No capital allowances can be claimed on the tangible assets which aren't used in the production of income. Also, a full amount of capital allowances can be claimed in the year in which the asset has been purchased, while no capital allowances can be claimed in the year of disposal.

Capital allowances can be offset against the source of trading income for each year. If the company doesn't have any taxable profits, then capital allowances can be carried forward indefinitely.

With regards to income tax of the transfer of tangible assets considered above, since they were assigned to a Related Group company in Malta, taking into consideration the group provisions, such transfers of assets are exempt and no income tax will arise from such transfers. However, we are told that the company had

already claimed wear and tear allowances (capital allowances) on the fixed assets that were transferred, therefore agree that no income tax will arise on such transfer however a balancing statement would still need to be prepared for each asset to arrive at the balancing allowance / charge with the amount of proceeds being 0 for each asset.

With regards to VAT, the transfers mentioned, the exclusive agency to a third party in Malta and the tangible fixed assets to a related Group Company in Malta, such transfers are out of scope for VAT purposes.

With regards to duty on documents on the transfer of rights for the exclusive agency, for the third party established in Malta, this is out of scope from Duty. While for the transfer of tangible assets for the group company, any transfers between the group are exempt from Duty due to the Group Relief provisions.

Income of the company is allocated to the MTA since it is trading in Malta and charged at normal rates to 35% taking into account the deduction of capital allowances and the expenses incurred in the production of the income. With respect to VAT, the pizzeria charges standard rate of 18% VAT and it can recover any VAT on any purchases it makes for it's production since it is a VAT registered taxable person.

Answer-to-Question-_Part C Question 6__

We are talking about a fiscal consolidation.

A fiscal consolidation can be formed between companies by making an election to the Commissioner for Revenue. Must be at least 2 companies. It is formed of the Principal Tax Payer together with the transparent subsidiaries. The principal tax payer must have at least 95% of ownership in the subsidiaries in the following: 1) entitled to at least 95% of the profit distribution, 2)holds at least 95% of the voting rights, 3)entitled to at least 95% of the assets distribution upon winding up. Therefore the principal taxpayer is the parent company of the subsidiaries within the group. The election to be made before the end of June for any respective YA and will come into effect as from that YA. An important feature for the fiscal consolidation is that the companies within such fiscal conslidation all have the same accounting periods and 1 company cannot be in more than 1 fiscal units.

The principal tax payer will be taking all of the balances of the companies within such fiscal unit, depending on the amount of ownership it has in the transparent subidiaries, if it has only 95% it will take the balances pro rata, 95%, if 100% will take the full balances. All income and expenses will be due to / by the principal tax payer.

In a fiscal unit, only 1 return is to be prepared and submitted each year covering all of the companies. All of the balances of the transparent subsidiaries will be allocated to the principal tax payer and any transactions between the companies among themselves will be ignored for any tax effects. Apart from preparing 1 tax return, a consolidated signed audited financial

statements would need to be prepared by the companies, showing all the balances under the principal tax payer. Also, the principal tax payer will be held responsible for any amounts due or discrepancies from the CFR.

A very important thing relating to tax advantages within a fiscal consolidation is that the effective tax rate for such companies is 5%. This eliminates the process of distributing the dividends at 35% tax rate and then preparing and submitting the refund claim forms as well as waiting for the refund to enter the bank account. Therefore, this is also an advantage in relation to cash flows since the company won't need to fork out the amount of tax and then wait for the refund to be received by claiming the 6/7ths refund like other companies do, ofcourse satisfying the conditions of the refund accordingly such as the UBOs being non res and non dom in Malta.