

# **THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION**

December 2021

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## **MODULE 2.03 – CYPRUS OPTION**

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**SUGGESTED SOLUTIONS**

## PART A

### Question 1

#### Part 1

Platform 1 which is licensed to ITS by third party owners and sub-licensed by ITS to casino operators constitute “qualifying intangible asset”, in accordance with the provisions of Article 9(1)(k) of the Income Tax Law and Regulations 336/2016.

As ITS did not incur any capital costs in relation to the development or upgrading of Platform 1, it is not entitled to any wear and tear allowances.

ITS, as the economic owner of Platform 1, is NOT eligible to claim an 80% deemed deduction on any “qualifying profits” earned from the sub-licensing of the right to use the said intellectual property (IP) to casino operators (i.e. royalty income), on the basis that it has not incurred any “Qualifying Expenditure”.

As per Regulations 336/2016:

- 1) “Qualifying Profits” are calculated by applying the following formula:  
$$\frac{\text{Qualifying Expenditure} + \text{Uplift Expenditure}}{\text{Overall Expenditure}} \times \text{Overall IP Income}$$
- 2) “Qualifying Expenditure” means the cost of research and development of the IP and other direct expenditure incurred wholly and exclusively for the development, improvement or creation of the IP (expenditure such as the cost of acquisition and the cost of outsourcing the development of the asset to related parties, is excluded).
- 3) “Overall Expenditure” is equal to the total amount of the Qualifying Expenditure and the expenditure incurred in relation to the cost of acquisition of the IP plus the cost of research and development of the IP which is outsourced to connected/related parties.
- 4) “Uplift Expenditure” is equal to the lower of:
  - the total amount of the expenditure incurred in relation to the cost of acquisition of the IP and the cost of research and development of the IP which is outsourced to connected/related parties; or
  - 30% of the Qualifying Expenditure.
- 5) “Overall IP Income”, includes income resulting from the licensing of the IP (royalty income).

As such, the company will be taxed on the total amount of royalty income generated, after allowing for any expenses incurred wholly and exclusively for the production of income. ITS may claim as a tax deduction the royalties paid to the third-party owners, for granting license to ITS to sub-license the Platform 1 to casino operators.

#### Part 2

Platform 2, as described, constitutes a “qualifying intangible asset”, in accordance with the provisions of Article 9(1)(k) of the Income Tax Law and Regulations 336/2016.

The capitalized cost relating to the upgrading and/or amendment of the Platform 2 and any other subsequent expenses of a capital nature may be amortized for tax purposes over its useful economic life, with a maximum period of 20 years, in accordance with the provisions of Article 9(1)(l) of the Income Tax Law.

On the basis that ITS Sub will incur “Qualifying Expenditure”, as described and analysed above, ITS Sub, as the legal owner of Platform 2, will be eligible to claim an 80% deemed deduction on any “qualifying profits” earned from the licensing of the right to use the said Platform to ITS.

The share capital and share premium to be issued by ITS Sub, qualify as “new capital”, in accordance with the provisions of Article 9B of the Income Tax Law.

ITS Sub will be entitled to claim notional interest deduction (NID) on such share capital and share premium, subject to the provisions of Article 9B of the Income Tax Law and Tax Circular 2016/10 dated 18/7/2016.

ITS Sub will be allowed NID which is equivalent to the lower of:

- “new capital” multiplied by the “reference rate”; and
- 80% of the taxable income produced by the asset.

The NID will be available for as long as the new capital remains in place and produces taxable income (i.e. royalty income generated from licensing Platform 2 to ITS).

The “reference rate” to be used for the purposes of calculating the annual NID must be the relevant 10-year Cyprus government bond yield, increased by 5%, as at 31 December of the year preceding the relevant tax year.

The annual NID to be claimed by ITS Sub will be treated as interest expense for the purposes of Article 11(15) of the Income Tax Law.

## Question 2

### Part 1

Provided that, following an examination in the light of the badges, of the provision of finance by LM as described, it is proved that such transactions fall within or are closely related to the ordinary course of trade of LM, then any interest income so generated shall be subject to income tax and shall be exempt from special contribution for the defence.

Any interest expense incurred by LM with respect to the TM Payable and TM Current account 1 Payable and which relates to:

- (i) the loans granted to its Czech subsidiaries LMC and DTC and ultimately owed by DTC (following the loan assignment described),
- (ii) the financing of the acquisition of the investments,

shall be tax deductible on the basis that the financing obtained was used to:

- (i) grant loans as part of LM's ordinary course of trade, and
  - (ii) finance the acquisition of 100% of the share capital of the said Czech subsidiaries,
- respectively.

The interest tax deduction shall be subject to the provisions of Article 11(15) of the Income Tax Law, including the anti-abuse provisions of the "interest limitation rule" under Article 11(16) of the same Law, as well as the provisions of Tax Circular 2010/8 dated 6/7/2010.

In accordance with the provisions of Article 11(15) of the Income Tax Law, as well as the provisions of Tax Circular 2010/8 dated 6/7/2010, any interest expense incurred by LM with respect to the TM Current account 2 Payable, will not constitute a tax deductible expense for LM, on the basis that the funds obtained were used to finance an asset which does not produce taxable income.

The transactions effected between LM and its BVI parent TM, as well as the transactions effected between LM and its Czech subsidiaries LMC and DTC which generate taxable income and/or give rise to tax deductible expenses, must be based on arm's length principles otherwise the provisions of Article 33 of the Income Tax Law shall be triggered.

### Part 2

The new share capital (including any share premium) to be issued by LM, as a result of the capitalization of the TM Payable and the TM Current Account 1 Payable, solely to the extent that these payables were used to fund the loans granted to the Czech subsidiaries (and not to fund the acquisition of the subsidiaries themselves) will constitute "new equity" in accordance with the provisions of Article 9B of the Income Tax Law and the provisions of Tax Circular 2016/10 dated 18/7/2016.

LM will be eligible to claim annual notional deduction (NID), in accordance with the above-mentioned provisions, as follows:

- (i) The NID will be available as from the date the new share capital is issued and fully paid and produces taxable income.
- (ii) With respect to the share capital to be issued for the purpose of capitalizing the interest payable on the TM Payable and the TM Current Account 1 Payable, the amount of the new equity to be used in computing the NID, cannot exceed the arm's length interest payable/expense.

- (iii) The new equity shall be considered to be matched with the loans to provided to the Czech subsidiaries, and which were subsequently solely owed by DTC (following the loan assignment by LMC to DTC).
- (iv) The reference rate to be used in the computation of the annual NID shall be the 10-year government bond yield of the jurisdiction in which the new equity is invested (i.e. the Czech Republic), as at 31 December of the year preceding tax year 2023, increased by 5%, as per the provisions of Article 9B(2)(a) of the Income Tax Law.
- (v) The annual NID cannot exceed 80% of the taxable income of LM arising from the loans granted and ultimately owed by DTC (following the above mentioned loan assignment).

## **PART B**

### Question 3

#### Part 1

Article 33B of the Income Tax Law (L 118 (I)/2002 as amended), stipulates the following:

Where a company transfers:

- (a) assets from its Head Office (HO) in Cyprus to its Permanent Establishment (PE) in another Member State or in a 3rd country, or from its PE in Cyprus to its HO or another PE in another Member State or in a 3rd country, and Cyprus no longer has the right to tax the transferred assets due to the transfer;
- (b) its tax residence from Cyprus to another Member State or to a 3rd country, except for those assets which remain effectively connected with a PE in Cyprus;
- (c) the business carried on by its PE in Cyprus to another Member State or to a 3rd country, without becoming tax resident in that other MS or third country but nonetheless becomes taxable therein, whilst Cyprus no longer has the right to tax the transferred assets due to the transfer,

the said company shall be subject to tax at an amount equal to the difference between the market value of the transferred assets and their value for tax purposes (tax written down value), at the time of exit.

No exit tax is imposed where certain types of assets are set to revert to Cyprus within 12 months from the transfer.

The payment of an exit tax may be deferred and settled in 5 installments over 5 years, along with interest. However, where there is a demonstrable and actual risk of non-recovery, the transferor may also be required to provide a guarantee as a condition for the deferral.

In certain circumstances, the deferral of payment is discontinued and the tax debt immediately becomes recoverable, whilst, if the transfer is made to a 3rd country, the deferral option shall be applicable only if the third country is party to the EEA Agreement.

The Cyprus Tax Department is also required to accept the value established by the transferor Member State, in respect of the object of transfer to Cyprus, unless this value does not reflect the market value.

#### Part 2

The transfer of the legal seat of SHL Cyprus Limited from Cyprus to Estonia, shall trigger exit tax implications:

The difference between the market value of the investments in SHL Netherlands Limited, SHL Bermuda Limited and SHL Estonia Limited and their value for tax purposes, will be exempt from income tax in accordance with Article 8(22) of the Income Tax Law, since the said investments constitute “titles” as per Article 2 of the Income Tax Law.

Given that SHL Cyprus Limited is also a financing company, an examination of the transactions that gave rise to Loans Receivable, in the light of the badges of trade, shall constitute the said asset as being of a revenue nature. Therefore, the difference between the market value of the Loans Receivable and their value for tax purposes, will be subject to income tax in accordance with Article 33B of the Income Tax Law.

The difference between the market value of the Trade Receivables and their value for tax purposes, will be subject to income tax in accordance with Article 33B of the Income Tax Law.

Similarly, on the basis that SHL Cyprus Limited is a financing company, an examination of the transactions that gave rise to the Derivatives Debit Balance, in the light of the badges of trade, shall constitute the said asset as being of a revenue nature. Therefore, the difference between the market value of the Derivatives Debit Balance and the value for tax purposes, will be subject to income tax in accordance with Article 33B of the Income Tax Law.

The value for tax purposes will be equal to the acquisition cost, as adjusted by any gains or losses that were treated taxable or tax deductible, up until the time of exit.

## **PART C**

### Question 4

#### Part 1

On the basis that:

- Ms Andreou was not tax resident in Cyprus, neither in 2020 which is the tax year preceding the year of her employment in Cyprus (i.e. 2021), nor in any three out of the last five years preceding the year of her employment in Cyprus, and
- Her contractual employment gross remuneration exceeded the amount of €100,000,

Ms Andreou is entitled to claim the 50% tax exemption stipulated by Article 8(23) of the Income Tax Law.

On the basis that, as from 1/1/2021 Ms Andreou is also a shareholder of AS Services Ltd, any financial assistance granted to Ms Andreou by virtue of the eligibility to withdraw cash from the company, as described, will trigger the provisions of Article 5(1)(g) of the Income Tax Law. As such, she will be taxed with an annual Benefit In Kind, at the rate of 9%. The Benefit In Kind shall be computed using the monthly balance of the current account, throughout the tax year.

Any dividends distributed to Ms Andreou in 2021 are exempt from special contribution for the defence, since she is not a Cyprus domiciled individual.

#### Part 2

Assuming that, Ms Andreou took up the offer of UK Consulting and Services Ltd and offered her services to the latter, as an independent consultant acting in her ordinary course of trade, any profits generated from such occupation formed part of her taxable income in 2021. However, such income is not eligible for the 50% tax exemption under Article 8(23) of the Income Tax Law, as it was not generated from employment services. Ms Andreou is entitled to claim as a deduction any expenses incurred wholly and exclusively for the production of such income, as well as any wear and tear allowances as applicable.

Assuming that Ms Andreou took up the offer of UK Consulting and Services Ltd and offered her services to the latter, under the explicit directions and instructions of the UK company, then most likely she created a permanent establishment in Cyprus for the UK company, in the form of a “dependent agent”. Other factors shall be examined thoroughly, including the capacity to sign contracts on behalf of the company and bind the latter contractually.

In such case, the profits generated by Ms Andreou must be attributed to the said permanent establishment and shall constitute taxable income of the UK company instead.

Ms Andreou, shall only be taxable in respect of a remuneration or fee for the services offered to the said company.



### Question 5

International double taxation can be categorized in two types: juridical and economic.

Juridical double taxation is the imposition of comparable taxes in two (or more) States on the same taxpayer in respect of the same subject matter for identical periods. Typical examples of juridical double taxation include cases where the resident of one state is taxed on items of income in a source state, and those items of income are also taxed in the residence state (e.g. interest; royalties; dividends; income from a permanent establishment).

Economic double taxation is the taxation on two different persons in respect of the same income or capital. Typical causes of economic double taxation are the rewriting of profits for transactions between associated enterprises (transfer pricing adjustments), and the simultaneous taxation of a company's profits at the level of the company and of the dividends at the level of the shareholder.

For the purpose of relieving international double taxation, the Cyprus Tax Department has at its disposal a Double Tax Agreement (DTA) network and domestic legislation.

#### DTA network

A network of Double Tax Agreements (DTAs) concluded with other Contracting States (CSs), including most EU member states and a good number of OECD member countries. The DTAs are based on the OECD Model Tax treaty on Income and on Capital, and allow for the elimination of both:

- juridical double taxation, by using the “tax credit approach”; and
- economic double taxation, via the use of “corresponding adjustments” and the Mutual Assistance Procedure (MAP).

#### Legislation

Article 34 of the Income Tax Law is the legal basis allowing for the enforcement of DTAs which have been concluded.

Article 35 of the same Law is the legal basis for relieving international juridical double taxation where a relevant DTA is in force, by using the “tax credit approach” and stipulates, inter alia, the following:

- 1) Tax paid in respect of any income in the other CS is to be allowed as a credit against tax payable in Cyprus in respect of that income.
- 2) The amount of credit cannot exceed:
  - the amount which would be ascertained if the amount of the income were computed in accordance with the provisions of the Income Tax Law and charged to tax at a rate ascertained by dividing the tax chargeable on the total income of the taxpayer by the amount of total income,
  - the total tax payable by the taxpayer for that same year.
- 3) The tax credit is made available only if the taxpayer so elects, and claims of a tax credit must be made not later than six years after the end of the tax year to which the credit relates, subject to certain exceptions.

Article 36 of the Income Tax Law allows for unilateral relief of double juridical taxation, via the “tax credit approach”. Where income tax has been paid on income derived in a foreign country with which a DTA has not been concluded, and such income is also subject to tax in Cyprus, the foreign tax paid is allowed as a tax credit against any tax payable in Cyprus in respect of such income, in a similar manner as per Article 35.

Article 36 also allows for the elimination of juridical double taxation with respect to permanent establishments abroad, by adopting the “exemption approach”, provided certain conditions are satisfied.

Article 33 of the Income Tax Law allows for the elimination of economic double taxation, in the context of transfer pricing adjustments, via the use of “corresponding adjustments”.

Cyprus is also a signatory to the EU Arbitration Convention, a tool which can be used to eliminate economic double taxation where the counter party to the controlled transaction is resident in another EU member state, via the use of “corresponding adjustments” and a stipulated Mutual Assistance Procedure (MAP).

## Question 6

### Part 1

The following persons have an obligation to pay GeSY contributions:

- Employees on their wages and salaries;
- Employers (natural or legal persons) on the wages, salaries of their employees and officers;
- Self-employed individuals on their business income;
- Pensioners on their pensions;
- Company officers on their remuneration (other than their salary on which the employer also needs to contribute);
- The Republic or every person who pays remuneration to its officials as provided by the holding an office;
- Persons receiving passive income (e.g. dividends, interest, rent); and
- The Permanent Fund of the Republic for employees' wages and salaries, self-employed individuals business income and Pensioners' pension income.

### Part 2

The following types of income are exempt from GeSY contributions:

- All income which exceeds €180,000 in any tax year
- Income which is exempt by other laws other than the Income Tax Law and SDC law, namely:
  - Shipping and ship management income as provided by the Merchant Shipping (fees and taxing provisions) Law 44/2010; and
  - Income from exploitation of buildings under a restoration order.

The following types of income are exempt from Income Tax and SDC but subject to GeSY contributions:

- Income which is specifically exempt under s.8 of the Income Tax Law 118/2002, e.g. Allowances paid to the President of the Republic and of the President of the House of Parliament on their withdrawal, Representation expenses of Ministers, the President of the Republic and members of Parliament, income from dividends and interest, income of foreign diplomats, etc.;
- Income of non-residents deriving from the Republic and subject to withholding tax at source e.g. income paid to foreign non-resident artists and athletes;
- Passive income (interest and dividends) of resident but non-domiciled individuals, otherwise exempt from SDC; and
- Deemed dividend income of resident but non-domiciled individuals, otherwise exempt from SDC.

### Question 7

#### Part 1

For natural persons (natural persons or unregistered partnerships of natural persons) disposing 'undeveloped potentially building land', taxable disposals are the following:

- Disposal of such land which is situated within a non-exempt urban planning zone;
- Disposal of such land which is not the first disposal of any land since 01/01/2015;
- Disposal of such land by the administrator of the estate of a deceased person irrespective of the number of disposals of land by the deceased i.e. even the first disposal is subject to VAT;
- Disposal of a piece of land which formed part of a larger piece of such land which resulted from a land separation procedure; and
- Disposal of such land by a self-employed individual already registered for VAT, which was acquired within the scope of that person's business activity.

#### Part 2

For natural persons (natural persons or unregistered partnerships of natural persons) disposing 'undeveloped potentially building land', and which are exempt disposals are the following:

- Disposal of a series of pieces of such land, where such pieces are continuous and form a single consolidated transaction to a single buyer, unless the land disposed of is situated within a non-exempt urban planning zone;
- Disposal of a piece or pieces of such land to a land separation contractor as consideration or part-consideration for its land separation services;
- The disposal of the last or only piece of such land of a natural person; and
- Disposal of such land held by a self-employed VAT registered person in his/her personal capacity which was initially acquired through inheritance or initially bought for the purposes of erecting the person's principal private residence, unless this is not the first disposal of such land (see above).

#### Part 3

VAT treatment of disposals of 'undeveloped potentially building land' by legal persons (limited liability companies or registered partnerships):

- Disposal of any number of pieces of such land by a VAT registered or non-VAT registered legal person which carries out a business activity, with or without consideration involved in the transaction, is a VAT taxable supply.
- Disposal of such land by a legal person not carrying a business activity and which had income from this land's exploitation on a long-term basis (dormant or holding legal persons), with or without consideration involved in the transaction, is outside the scope of VAT.

- Disposal of such land which was initially acquired by a legal person through a free transfer, i.e. without any consideration received, by a shareholder of the company and was never used for business activity purposes (e.g. leasing or development), and is returned back to the same shareholder without any consideration i.e. a free transfer back, is outside the scope of VAT.