

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2021

MODULE 2.07 – MALTA OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Part 1

The redomiciliation will not of itself trigger Maltese taxation.

Post-redomiciliation, BritCo will be tax resident in Malta in terms of domestic tax law, and as such will be taxable in Malta on its worldwide income and chargeable capital gains.

USCo did not establish a PE in Malta. Consequently, it will not be liable to Maltese tax on Malta sourced income (including and Malta sourced interest income, Malta sourced royalty income and business profits). In theory, USCo would be liable to Maltese tax on any dividends distributed by BritCo; however, the full imputation system and the mechanisms contemplated within the tax accounting system will neutralise any Maltese tax liability on dividends.

Part 2

On the basis that royalties paid will be incurred in the production of BritCo's income, royalties paid to USCo will be tax deductible in the hands of BritCo. USCo will not be liable to Maltese tax on Malta sourced royalty income.

On the basis that interest paid will be incurred in the production of BritCo's income, interest paid to USCo will be tax deductible in the hands of BritCo. Nonetheless, BritCo must be mindful of the interest deductibility limitation rule introduced by ATAD. USCo will not be liable to Maltese tax on Malta sourced interest income.

Effectively, no further tax will be charged on dividends distributions. In addition, certain dividend distributions will generate an entitlement to refunds payable in terms of the refundable tax credit system.

Capital contributions will not of themselves create any adverse Maltese income tax consequences.

BritCo's income from trading with its customers in the EU will be allocated to its Malta taxed account and taxed at the rate of 35%.

In principle, the transfer of this intellectual property right triggers Maltese income tax on capital gains on the transfer; however, the intra-group exemption would apply.

A passive loan interest portfolio is not a chargeable asset, implying that income tax on capital gains would not apply. In the circumstances, the loan interest portfolio should not, for capital gains purposes, be classified as a 'business'.

The shift in management and control would trigger exit taxation, income tax on capital gains on an imputed capital gain.

The Income Tax Act contemplates an exemption in the case of capital gains derived by non-residents in the context of a liquidation. Consequently, any gains derived by USCo pursuant to the liquidation will be tax exempt in Malta.

Part 3

Given that USCo is not Maltese resident, surrendering of losses between BritCo and UsCo is not possible under any conditions.

Under the Refundable Tax Credit System, tax paid by BritCo on its MTA profits will be partly refunded to USCo upon a dividend distribution. The applicable refund rate will be the 6/7 refund.

Given the shareholding quota held by USCo in BritCo, the two companies may, in principle, apply to form a fiscal unit subject to the following conditions:

- An election must be made by submitting the relevant form;
- The companies must have have accounting periods beginning and ending on the same dates.

Question 2

Part 1

Given that Mr Riches will be establishing a fixed, regular presence in Malta, Mr Riches should be considered to be ordinarily resident in Malta. Given that Mr Riches will stay in Malta without forming the intention to remain in Malta permanently (since he intends to relocate outside Malta after ten years), he will not be considered domiciled in Malta. Mr Riches will be subject to the remittance basis of taxation.

Given that Mr Borg will be establishing a fixed, regular presence in Malta, Mr Borg should be considered to be ordinarily resident in Malta. Given that Mr Borg will relocate to his domicile of origin, Mr Borg will be domiciled in Malta too. Mr Borg will therefore be taxed on his worldwide income and chargeable capital gains.

Part 2

Will Mr Riches' private pension (received in his Maltese bank account) be taxed in Malta?

Given that the private pension represents foreign source income that will be received in Malta by a resident non-domiciled individual, it will be taxed in Malta.

Will Mr Riches' interest income (retained in a Swiss bank account) be taxed in Malta?

Given that the interest income represents foreign source income that will not be received in Malta by a resident non-domiciled individual, it will not be taxed in Malta.

Will Mr Riches be taxed on profits he will derive from trading in securities listed on non-Maltese stock exchanges?

Trading income is deemed to arise where the activities generating such income take place. Given that Mr Riches will be trading from Malta, income from his trade will be deemed to arise in Malta and will not be subject to the remittance basis of taxation. Accordingly, trading profits derived from deals in the shares will be taxed in Malta.

Part 3

To: Mr Riches, Mr Borg

From: Tax Advisor

Date: XX June 2021

Mr Riches is eligible to the remittance basis of taxation, which incorporates tax saving opportunities (foreign source income that is not received in Malta and foreign source capital gains are outside the scope of Malta tax). In addition, Mr Riches may wish to consider applying for one of Malta's tax schemes targeted towards high earners. The latter schemes, including especially the Residence Programme Rules ('RPR'). S.L.123.160 contemplates a special scheme for EU, EEA or Swiss Nationals. It is very similar to the GRPR scheme. Beneficiaries under RPR benefit from the right to pay tax at 15%. The minimum amount of tax payable is of €15,000.

Fees paid for Homes for The Elderly should be allowed by way of tax deduction, subject to the €2,500 capping.

The pension will be taxed in Malta because it is Malta source income derived by an individual who is subject to tax on his worldwide income and chargeable capital gains. Alimony payments granted by a court of a Member State like Italy are tax deductible. School fees paid to a Swiss School will not be tax deductible because the current regime only provides for the deductibility of fees paid to certain Maltese independent schools.

Mr Riches and Mr Borg would be subject to the same rules applicable to married couples, implying that they would become entitled to file a joint tax return applying joint computation. The registration of the civil union will imply that even Mr Riches (qua spouse of a Maltese domiciliary) would become subject to the worldwide basis of taxation.

Upon purchase, in principle they would be liable to pay duty on documents and transfers at the rate of 5% of transfer value, although lower rates of duty may apply depending on the nature of the property they will be purchasing.

Upon sale, in principle they would be liable to pay property transfers tax at the rate of 8% of transfer value but the 'own residence' exemption available to individuals disposing of property they would have owned and occupied for more than 3 years should be available to them.

Although donations would, in theory, fall within the purview of property transfers tax, multiple exemptions, including especially the own residence exemption, would apply to the donation.

Maltese tax law does not contemplate taxation on a bequest of cash. Conversely, duty on documents is contemplated with respect to testamentary bequests of securities and immovable property. The bequest of the Maltese property would certainly fall within the purview of duty on documents, although an exemption is envisaged. The same exemption applies to the transfer of securities too (albeit transfers of securities would fall within the remit of duty only if the document transferring the asset is 'used' in Malta within the meaning of the term 'use' applied in the Duty on Documents and Transfers Act).

PART B

Question 3

A dividend received from Italia Srl (EU), wherein PML holds 2% of the equity shares. PML shares in Italia Srl have a market value of €5,000,000

Subject to the Participation Exemption.

A capital gain derived from the transfer of the entire share capital of Bahamas Limited ('BL')

Prior to the transfer, BML held all the shares in BL (non-EU). The shares held by PML in BL fall within the definition of equity shares but are of a value inferior to EUR1,000,000. BL is not subject to tax in the Bahamas.

Subject to the Participation Exemption since the anti-abuse conditions associated with the participation exemption do not apply to capital gains.

Profits derived from its joint venture in Angola. PML traded via its fixed place of business in Angola

Such overseas branch trading profits are eligible to the Participation Exemption.

Interest income paid by Port Ltd in terms of a profit participating loan is not subject to the Participation Exemption.

Dividend income from its Spanish (i.e. EU) subsidiary ('Espana LLC')

PML holds 99% of the equity shares in Espana LLC and the value of the shares in the Espana LLC exceeds €5,000,000. The dividend distributed by Espana LLC was subject to withholding tax in Spain; however, the dividend distributed by the Espana LLC was booked as a tax-deductible expense in the books of the Espana LLC and as such this dividend does not qualify for the Participation Exemption.

Interest income paid by Espana LLC in terms of a profit participating loan is not subject to the Participation Exemption.

An unrealised gain derived from equity shares held in its subsidiary in the United Kingdom

Outside the scope of tax and consequently not subject to the Participation Exemption.

A dividend from a UK Limited Liability Partnership (UK LLP) which carries on a trading activity within the UK

PML is a limited partner in UK LLP and its 60% partnership interest entitles it to participate in the profits of UK LLP and to vote. In the UK, UK LLP is treated as a transparent entity and partners are taxed exclusively in their country of residence. In Malta, UK LLP has elected to be treated as a company. Subject to the Participation Exemption.

A dividend from a collective investment vehicle constituted outside Malta which is not resident in Malta

PML's liability in the scheme is limited to the amount invested by it and PML's units carry voting rights and profit participation rights. Subject to the Participation Exemption.

A dividend distributed from the untaxed account of a Maltese Collective Investment Scheme

Not Subject to the Participation Exemption, however the dividend will not be taxable and will be allocated to PML's own untaxed account.

PART C

Question 4

Part 1

HL and MTL will no longer be required to submit separate tax returns; instead, they will submit a single consolidated income tax return incorporating the reportable items of both companies in a single return.

Furthermore, HL shall be required to prepare a consolidated balance sheet and consolidated profit and loss account covering both HL and MTL, being the companies forming part of the fiscal unit.

The principal taxpayer of a fiscal unit shall be a company within the fiscal unit which is not a transparent subsidiary and is the parent company of one or more transparent subsidiaries. Therefore, HL shall be the principal taxpayer.

In the circumstances, HL's and MTL's combined effective tax rate will be of 5%.

Part 2

The beneficial combined effective tax rate created by the Refundable Tax Credit System will not be impaired. Indeed, the process to crystallize the application of the effective tax rate will be hastened. HL will no longer need to file a refund claim form after MTL distributes a dividend in favour of HL and submits its tax return (paying its tax accordingly). The application of fiscal consolidation removes delays caused by the standard procedure contemplated in the refundable tax credit system. Effectively, the tax otherwise due by MTL is automatically set-off against HL's refund entitlement.

Part 3

Should there be any balance in MTL's capital allowances, the balance shall be considered to pertain to HL as the principal taxpayer.

MTL shall be a transparent entity for Malta income tax purposes. As a result, any income and gains derived by MTL shall be directly allocated to HL as the principal taxpayer. Similarly, expenditure (as well as capital allowances as stated above) incurred by MTL is directly allocated to HL.

Any transactions between MTL and HL as members of the same fiscal unit shall be disregarded, with the exception of transfers of immovable property situated in Malta, and transfers of property companies. Income or gains of MTL allocated to the HL as the principal taxpayer shall generally retain their character and source.

The balance of any profits allocated to MTL's tax accounts, excluding the untaxed account, shall be a balance of HL.

Question 5

Part 1

The transfer of the securities would be taxed under the Income Tax Act as a transfer of a controlling interest. Tax would be charged on the chargeable gain as determined using the methodology set out in the capital gains rules.

The share transfer would generally not fall within the scope of a charge to duty in Malta, and would be subject to duty in Malta only if 'use' of the share transfer is made in Malta for the purposes of the Duty on Documents and Transfers Act.

The transfer of shares is outside the scope of Malta VAT.

Part 2

Albeit chargeable gains arising on the transfer of IP fall within the remit of the ITA, the transfer will be done between two non-Maltese resident entities, implying that the transfer will be outside the scope of Maltese Income Tax.

The transfer of IP is not subject to Duty on Documents and Transfers.

The place of supply of the transfer will not be Malta, implying that the transfer will not be subject to Maltese VAT.

Part 3

The donation will fall within the remit of the Income Tax Act but will be tax exempt (donation to close relative).

The share transfer would be subject to duty in Malta only if 'use' of the share transfer is made in Malta for the purposes of the Duty on Documents and Transfers Act.

The transfer of shares is outside the scope of Malta VAT.

Part 4

The redomiciliation will not of itself give rise to any Maltese tax liability; however, upon redomiciliation Mask Ltd will become a resident of Malta and hence taxable on its worldwide income and capital gains.

The redomiciliation should also not of itself have any direct implications under the Duty on Documents and Transfers Act and the VAT Act.

Part 5

Ms Vella will be taxable in Malta on any gains or profits derived from the liquidation.

The liquidation should not of itself have any direct implications under the Duty on Documents and Transfers Act and the VAT Act.

Question 6

Acquisition of Oil Tanker

Income Tax

The transferor of the oil tanker would need to consider implications under the Income Tax Acts. For the purposes of Article 5 ITA, ships are not chargeable assets, implying that there will not be any capital gains implications.

Assuming that the Maltese resident company did not hold the tanker by way of stock in trade, the transfer will be out of scope of Article 4 too.

If transferor availed itself of capital allowances, the transfer will create an obligation to draw up a balancing statement reporting any deemed profit on disposal as a balancing charge.

The transferee will not be liable to income tax.

Duty on Documents and Transfers

Out of scope.

VAT

The supply of vessels used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial activities is VAT exempt with credit.

Using a Company Incorporated under the MSA

The company could be established as a shipping organisation and tonnage tax paid on the ship in which case, subject to certain compliance obligations, and the payment of tonnage tax no further tax under the Income Tax Act would be charged on the income of that shipping organisation, to the extent that such income is derived from shipping activities.

In addition, no further tax under the Income Tax Act shall be charged or payable on any income, profits or gains of a shipping organisation derived from the sale or other transfer of a tonnage tax ship which had been acquired and sold whilst under the tonnage tax system or from the disposal of any rights to acquire a ship which when delivered or completed would qualify as a tonnage tax ship. The exemption applies provided that the activities and objects of the organisation, where applicable, are restricted to such shipping activities and related activities.

The distribution of profits derived from shipping activities or from other transactions referred to above are exempt from tax under the Income Tax Act in the hands of the shareholders.

The definition of the term 'shipping activity' is key because the tax exemptions gravitate around it. Rule 2 defines the term "shipping activities" as meaning:

1. the international carriage of goods or passengers by sea in terms of the EU Maritime State Aid Guidelines and such other activities that have been approved or considered as eligible for tonnage tax purposes by the European Commission;
2. such activities as are integral or directly linked to the business of operating tonnage tax ships, when carried out in conjunction with activities described in paragraph (1) above;
3. qualifying ancillary activities when carried out in conjunction with activities described in paragraph (1) above.

Using a Company Incorporated under the Companies Act

The Company would be taxed on its profits at the rate of 35%. Such profits would be allocated to the Company's MTA. Dividend distributions of such profits would trigger the refundable tax credit system. The default 6/7 refund would apply, bringing down the combined effective tax rate to 5%.

Question 7

The Interest Deductibility Rule in S.L. 123.187.

Anti-Hybrid Rules in S.L. 123.187.

CFC Rule in S.L. 123.187.

Exit Tax Rule in S.L. 123.187.

GAAR in S.L. 123.187.

GAAR in the ITA.

Ani-Abuse Conditions linked to the Participation Exemption.

Article 26 (h) ITA on interest deductibility.

Rules contained in S.L. 123.127 providing for sharing of information.

LOB clauses in Double Tax Treaties.

Any other relevant anti-tax avoidance provisions with an international dimension in terms of the Income Tax or its subsidiary legislation would also be acceptable. Each rule chosen by candidates should be accompanied by a brief explanation thereof.