THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2021

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. US Corporation (USCo) is a company resident in the United States, with legal characteristics equivalent to those of a Maltese Limited Liability Company (LLC). USCo holds the entire share-capital of Brit Company Ltd (BritCo), a company resident in the United Kingdom whose legal characteristics are also equivalent to those of a Maltese LLC. USCo does not plan to establish a permanent establishment in Malta.

   BritCo is a trading company licensed by USCo to commercially exploit USCo's bespoke brands in the European market. However, due to Brexit, a migration (redomiciliation) of BritCo from the UK to Malta is being considered by the ultimate beneficial owners of USCo and BritCo. BritCo does not have a permanent establishment outside the UK.

   The owners of USCo and BritCo have sought your professional tax advice.

   You are required to:

   1) **Explain whether the redomiciliation will trigger income taxation in Malta, as well as BritCo and USCo's respective exposure, if any, to Maltese income taxation post-redomiciliation.** (5)

   2) **Determine the Maltese income tax treatment of each of the following items:**

      a) **any royalties, interest and dividends which BritCo will pay to USCo, post-redomiciliation;**

      b) **any capital contributions which US Co will inject in BritCo, post-redomiciliation;**

      c) **any trading income which BritCo will receive, post-redomiciliation, from its European Union-based customers (tax rate and tax accounting);**

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

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

      f) **an eventual shift of BritCo's management and control functions from Malta to Scotland, occurring after the redomiciliation; and**

      g) **an eventual liquidation of BritCo, occurring after the redomiciliation and shift in management and control to Scotland.** (14)

   3) **Discuss whether the surrendering of losses between BritCo and USCo will be allowed after the redomiciliation, and under which conditions. How would the Refundable Tax Credit System be applied to the double structure involving USCo and BritCo, and can these two entities form a fiscal unit? If so, under which conditions?** (6)

   Total (25)

2. Mr Riches is a retired entrepreneur who is resident and domiciled in Canada. He is considering making Malta his home for the next ten years, but intends eventually to leave Malta and move to a luxury home for the elderly in southern France.

Mr Riches has been regularly residing with his partner, Mr Borg, who is domiciled in Malta and will be moving to Malta with Mr Riches. Mr Riches and Mr Borg are neither married, nor in a civil union.

Mr Riches seeks your guidance on a number of tax questions, related to his planned ten year stay in Malta.

You are required to:

1) **Determine Mr Riches' and Mr Borg's respective status for Maltese tax purposes during the ten years they plan to stay in Malta.** (5)

2) **Explain the Maltese Tax Treatment of the private pension which Mr Riches will receive in his Maltese bank account, the interest income which he will retain in his Swiss bank account, and the profits he will derive from trading in securities listed on non-Maltese stock exchanges.** (4)

3) **Prepare a tax memorandum, providing the following information to Mr Riches and Mr Borg:**

   a) **In the event that Mr Riches is liable for Maltese tax, describe any tax saving opportunities which the Maltese tax system may offer him. Will Mr Riches be entitled to claim a deduction with respect to fees paid to his mother's home for the elderly in France?**

   b) **Will Mr Borg be taxed in Malta on his Malta Government pension? Will he be allowed a tax deduction with respect either to alimony which an Italian court had decreed that he is to pay to his ex-wife, or to the fees paid to his son's secondary school in Switzerland?**

   c) **Would Mr Rich's and Mr Borg's tax status change if they were to register a Maltese civil union?**

   d) **What taxes, if any, would Mr Riches and Mr Borg be liable to pay if they were to jointly purchase a house in Malta? What taxes would apply if they were to then sell the house to a third party at the end of their ten-year stay in Malta? What taxes would apply if they were instead to donate the house to Mr Borg's son at the end of their stay in Malta?**

   e) **If, during the ten-year stay in Malta, Mr Borg was to inherit Mr Riches' cash at bank, foreign securities and equity in the house in Malta, what Maltese taxes, if any, would Mr Borg have to pay?** (16)

Total (25)

PART B

You are required to answer THIS question.

3. Participations Malta Limited (PML) is a company that was incorporated in Malta during 2007. PML is not a property company and its sole shareholder is an individual who is resident and domiciled in the United Kingdom. PML holds investments in several countries, in the form of securities, interests in joint venture agreements and profit participating loans. In the relevant year of assessment, PML earned the following gains and profits:

   - A dividend received from a company incorporated and tax resident in Italy (Italia Srl), in which PML holds 2% of the equity shares. PML's shares in Italia Srl have a market value of €5 million.
   - A capital gain derived from the transfer of the entire share capital of Bahamas Ltd (BL), a company incorporated and tax resident in the Bahamas. Prior to the transfer, BML held all shares in BL. The shares held by PML in BL fall within the definition of equity shares but are of a value less than €1 million. BL is not subject to tax in the Bahamas.
   - Profits and interest income derived from a joint venture in Angola. PML entered into the joint venture in 2010 with a Portuguese tax resident company (Port Ltd) which operated a branch in Angola. PML and Port Ltd did not incorporate a company, instead trading under their own names. PML traded via its fixed place of business in Angola. Interest income was paid by Port Ltd to PML in relation to a profit participating loan. PML and Port Ltd are not related parties.
   - Dividend and interest income from its Spanish subsidiary (Espana LLC). PML holds 99% of the equity shares in Espana LLC and the value of these shares exceeds €5 million. The dividend distributed by Espana LLC was subject to withholding tax in Spain, and this dividend distribution was booked as a tax-deductible expense in Espana LLC's accounts. The interest income was paid by Espana LLC to PML in relation to a profit participating loan.
   - An unrealised gain resulting from a revaluation of equity shares held in its subsidiary in the United Kingdom.
   - A dividend from a non-EU, UK Limited Liability Partnership (UK LLP) which carries on a trading activity in the UK. PML is a limited partner in UK LLP, and its 60% partnership interest entitles it to vote as well as to participate in the profits of UK LLP. UK LLP is treated as a transparent entity in the UK, and partners are taxed exclusively in their country of residence. In Malta, UK LLP has elected to be treated as a company.
   - A dividend from a collective investment vehicle constituted outside Malta which is not tax 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.
   - A dividend distributed from the untaxed account of a Maltese Collective Investment Scheme.

   You are required to determine whether or not each of the gains and profits listed above is subject to the Participation Exemption, briefly explaining your reasoning. (20)

PART C

You are required to answer TWO questions from this Part.

4. Holdings Limited (HL) is a company registered in Malta that holds all shares in Maltese Trading Ltd (MTL), another Maltese registered company. The shareholders of HL are all persons who are neither resident nor domiciled in Malta.

   In 2019, HL and MTL formed a fiscal unit in adherence to the Consolidated Group (Income Tax) Rules. HL's income consists of dividend income derived from MTL's Maltese Taxed Account. MTL's income consists of operating income which it distributes to HL. MTL has a policy of not claiming double taxation relief, and its memorandum and articles of association do not incorporate the empowerment clause required to apply the Flat Rate Foreign Tax Credit.

   You are required to explain how the election to form a fiscal unit will impact on HL and MTL, in relation to the following matters:

   1) **HL's and MTL's tax compliance obligations (including stating which entity shall be the principal taxpayer of the fiscal unit) and the combined effective tax rate of the fiscal unit;** (6)

   2) **Whether, and how, the election will affect HL's rights and compliance obligations in relation to the Refundable Tax Credit System; and** (4)

   3) **The tax treatment of MTL's capital allowances and chargeable income, and the impact on HL and MTL's tax accounting.** (5)

   Total (15)

5. Mask Ltd is a company resident in the United Kingdom that has developed the technology and expertise required to produce a line of medical facemasks known as Protect-911. Protect-911 masks are considered the best on the market and are expected to remain in production for many years to come.

   Mask Ltd has registered the tradename Protect-911 as a trademark and has patented its invention, investing heavily in the intellectual property involved in the production of the facemasks. Nonetheless Mask Ltd's sole shareholder, Ms Vella, an individual who is both ordinarily resident and domiciled in Malta, is considering an early retirement and wants to divest herself of the asset. Five options are being considered:

   1) An outright sale of Ms Vella's shares in Mask Ltd to a United States-based company listed on the New York Stock Exchange;

   2) A transfer of Mask Ltd's assets, including its intellectual property, to its main competitor, a company resident in China;

   3) A donation of Ms Vella's shares in Mask Ltd to her stepson, a Swiss resident;

   4) Redomiciliation of Mask Ltd from the UK to Malta; and

   5) Liquidation of Mask Ltd.

   You are required to explain and compare the Maltese Income Tax, Duty on Documents and Transfers and VAT implications of the five options under consideration by Ms Vella. (15)

6. Mr Aziz is an entrepreneur who is neither ordinarily resident nor domiciled in Malta. He is in the process of acquiring an oil tanker from a Maltese resident shipping company, which will be in Maltese territorial waters at the time of sale.

   Mr Aziz decided to acquire the vessel through a company resident in Malta; he is considering using either a company incorporated under the Companies Act or a company incorporated under the Merchant Shipping Act. The vessel will be used to carry petroleum products from China to the Netherlands.

   You are required to explain the Maltese Income Tax, Duty on Documents and Transfers and VAT implications, at the level of both the transferor and transferee companies, of the acquisition of the vessel by Mr Aziz's Maltese resident company, and to determine the tax treatment of the two types of companies Mr Aziz is considering using. (15)

7. **Identify and briefly explain ten rules contained in the Income Tax Acts and subsidiary legislation aimed at combatting international tax avoidance.** (15)