



# **THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION**

June 2016

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## **PAPER 2.07 – MALTA OPTION**

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**Suggested Solutions**

## PART A

### Question 1

#### Part 1

<u>Profit</u>	<u>FTA (A)</u>	<u>FTA (B)</u>	<u>FTA (C)</u>	<u>IPA</u>	<u>FIA</u>	<u>MTA</u>	<u>UA</u>
Rent from Tuscany					50,000 (1)		
Rent from Sliema			20,000 (2)				
Rent Office Block				25,000 (3)			
Profits after tax from transfer of Valletta warehouse	550,000 (4)						
Profits after tax from transfer of Sliema warehouse		650,000 (5)					
FRFTC					12,500		
Total	550,000	650,000	20,000	25,000	62,500		
Tax @ 35%				8,750	21,875		
Tax @ 15%			3,000				
Tax @ 10%	50,000 (4)						
Tax @ 8%		52,000 (5)					
Less FRFTC					12,500		
Total	495,000 (4)	598,000 (5)	17,000	16,250	9,375	-	-

- a) Foreign source rental income is allocated to the FIA.
- b) Rental of residential property in Malta is subject to the 15% regime contemplated in 31 (D) ITA. Net income (20,000 less tax at 15%) is allocated to the FTA.
- c) Local source rental income is allocated to the IPA. Rents of office blocks are not subject to the 15% regime which applies only to residential property.
- d) In this case, sale proceeds are equivalent to transfer value and tax is charged on transfer value. In this case, tax is charged at 10%.
- e) In this case, sale proceeds are equivalent to transfer value and tax is charged on transfer value. In this case, tax is charged at 8%.

#### Part 2

- a) This is subject to VAT at 7%.
- b) This transaction is not subject to VAT.
- c) This transaction is subject to VAT at 18%.
- d) The place of supply of services connected with immovable property is the place where the immovable property is located. Given that the place of supply will not be Malta, VAT does not have to be charged in Malta.
- e) The place of supply of services connected with immovable property is the place where the immovable property is located. Given that the place of supply will not be Malta, VAT does not have to be charged in Malta.

## Question 2

In the circumstances, Nikolai must be treated as an individual who is both ordinarily resident and domiciled in Malta who is taxable on his worldwide income.

### Part 1

#### Income Tax Implications

Article 6 of the treaty provides that, in principle, the transfer is taxable both in Russia and Malta. Alexi is Nikolai's son and the 'close relatives' exemption from capital gains should apply.

#### VAT Implications

The transfer is out of scope.

#### Duty Implications

Not subject to duty in Malta because the transfer being contemplated does not amount to the execution or use of a document in Malta.

### Part 2

#### Income Tax Implications

Out of scope.

#### VAT Implications

Out of scope.

#### Duty Implications

Out of scope.

### Part 3

#### Income Tax Implications

Gains derived by a person who is both resident and domiciled in Malta from the alienation of shares or other rights deriving more than 50 per cent of their value directly or indirectly from immovable property situated in Russia may be taxed in Russia but any Russian tax paid is credited against Maltese tax payable (if any).

In principle, the transfer is taxable in Malta and is not tax exempt. The special rules relating to the determination of a capital gain that is deemed to arise upon the transfer of a controlling interest apply.

#### VAT Implications

Out of scope.

#### Duty Implications

Not subject to duty in Malta because, for the purposes of the law, there will not be execution or any 'use' of the document in Malta.

### Part 4

#### Income Tax

The Treaty with Spain provides that gains derived by a resident of Malta from the alienation of immovable property situated in Spain are taxable both in Malta and Spain. Nonetheless, in Malta, the transfer is tax exempt (transfer to close relative).

#### VAT Implications

Out of scope.

#### Duty Implications

Out of scope.

#### Part 5

##### Income Tax

The transfer of image rights amounts to the transfer 'of any other intellectual property' and is, in principle, subject to income tax. Nonetheless, the 'close relatives' exemption applies.

#### VAT Implications

Out of scope.

#### Duty Implications

Out of scope.

#### Part 6

##### Income Tax

This transfer is subject to Property Transfers Tax.

#### VAT Implications

Out of scope.

#### Duty Implications

This transfer is subject to duty on documents and transfers.

#### Part 7

##### Income Tax

Out of scope.

#### VAT Implications

Out of scope.

#### Duty Implications

Out of scope.

#### Part 8

##### Income Tax

In principle, transfer is subject to income tax because transferor is both ordinarily resident and domiciled in Malta. Nonetheless, in Malta, the transfer is tax exempt (transfer to the trustee when sole settlor is sole beneficiary).

VAT Implications

Out of scope.

Duty Implications

No subject to duty in Malta – exempt from duty even if document is executed or used in Malta.

**PART B**

Question 3

<u>Profit</u>	<u>FTA (A)</u>	<u>FTA (B)</u>	<u>FTA (C)</u>	<u>FTA (D)</u>	<u>IPA</u>	<u>FIA (1)</u>	<u>FIA (2)</u>	<u>MTA</u>	<u>UA</u>
Youkay Ltd Dividend	200,000 (1)								
Dividend from Cash Drive Ltd						5,000 (2)			
Dividend from Lux Ltd							500,000 (3)		
Distribution from Island LP		100,000 (4)							
Profits from SA PE			3,000 (5)						
Net local bank interest				2,352 (6)					
Local bank interest (gross)								100,000	
Subtotal	200,000	100,000	3,000	2,352		5,000	500,000		
FRFTC						1,250	125,000		
Total	200,000	100,000	3,000	2,352		6,250	625,000	100,000	
Tax @ 35%						2,187	218,750	35,000	
Tax @ 15%				(352)					
Tax @ 0 %	0	0	0						
Less FRFTC						1,250	125,000		
Settlement tax payable	0	0	0	0		937	93,750	35,000	-
First stage allocation to tax accounts	200,000	100,000	3,000	2,352		4,063	406,250	65,000	
Secondary allocation - Annual Market Rent: 250x200					50,000			(50,000)	
Final allocation to tax accounts	200,000	100,000	3,000	2,352	50,000	4,063	406,250	15,000	

Part 1

Shares in Youkay Ltd are an equity holding (2 out of 3 conditions are met). They are a PH (because of the value). Shares are held in a UK company (resident in an EU Member State) implying the anti-abuse conditions are met. Therefore, the Participation exemption applies.

Part 2

Shares in Cash Drive Limited are an equity holding. They are a PH too but the Participation exemption does not apply because the anti-abuse conditions are not met. Nonetheless FRFTC may be availed of.

### Part 3

Shares in Lux Limited are both an equity holding and PH meeting the anti-abuse conditions too but because of the interest deductibility restriction introduced in 2015, the participation exemption does not apply. Nonetheless, FRFTC may be availed of.

### Part 4

Interest held in the Irish entity qualifies as equity and a PH meeting the anti-abuse conditions because of the substance over form proviso contained in the definition of PH.

### Part 5

Company has a PE in South Africa (mine). Profits attributable to a foreign PE are exempt in terms of the participation exemption.

### Part 6

Net local bank interest is allocated to the FTA.

### Part 7

Gross local bank interest is allocated to the MTA.

Distributions from FTA are not subject to further tax and are not eligible for tax refunds.

Distributions from IPA are not subject to any further tax and are not eligible for tax refunds.

In this case, distributions from the FIA are subject to the 2/3 refund (income relieved by FRFTC).

In this case, distributions from MTA are subject to 5/7 refund (passive interest).

## PART C

### Question 4

#### Part 1

The companies will be taxed in Malta on business profits if they establish a permanent establishment (PE) in Malta.

#### Invoice raised by Spanish subsidiary (installation and assembly for seven months)

The Double Tax Treaty between Malta and Spain establishes that an installation project constitutes a PE if it will last more than 12 months. Therefore, it will not have a Maltese PE and will not be taxed in Malta.

#### Sale of Hardware by Russian Company

The Russian company will be merely exporting goods to Malta. It will not have a fixed place of business in Malta and will not be taxed in Malta.

#### Services rendered by Italian Company

The Double Tax Treaty between Malta and Italy provides that the furnishing of services, including consultancy services, by an Italian enterprise through employees or other personnel, where activities of this nature continue (for the same or a connected project) within Malta for a period or periods aggregating more than twelve months within any two-year period constitute a PE.

Therefore, the Italian company will be taxed in Malta on its business profits attributable to the PE in Malta.

#### Services rendered by IT Corporation

The Double Tax Treaty between Malta and the USA provides for neither a services nor a supervisory PE. Therefore, IT Corporation will not establish a PE in Malta and will not be taxed in Malta.

#### Part 2

- a) Rental income from immovable property (residential accommodation leased to an individual) situated outside Malta: 0% because tax exempt.
- b) Rental income from immovable property (residential accommodation leased to an individual) situated in Malta: 15%
- c) Maltese source bank interest: 15%
- d) Maltese source investment income which is not bank interest: 10%
- e) Dividend received from a foreign company which does not qualify as a Participating Holding: 0% because tax exempt.



## Question 5

### Part 1

- a) Not deductible
- b) Deductible
- c) Not deductible
- d) Deductible
- e) Deductible
- f) Not deductible
- g) Not deductible
- h) Deductible

### Part 2

- a) HL SICAV Ltd and Operations Ltd are members of the same group because:
  - they are both resident in Malta, exclusively; and
  - Operations Ltd is a subsidiary of HL SICAV Ltd as to more than 50%.
- b) Both companies have the same year ends. Operations Ltd can surrender its MTA loss to HL SICAV Ltd to be absorbed by the IPA income of HL SICAV Ltd. Being a collective investment scheme, HL SICAV Ltd cannot operate a FIA and therefore the FIA loss should not be surrendered.

HL SICAV Ltd and Taljani Ltd are not a group because Taljani Ltd is tax resident also in Italy. Taljani Ltd may not surrender its losses to HL SICAV Ltd.

For the same reason, Taljani Ltd and Operations Ltd are not an indirect group and therefore no losses may be surrendered between Taljani Ltd and Operations Ltd.

### Part 3

The registration of the civil union will impact on Piers and Paul's income tax compliance obligations as follows:

- Piers and Paul will be treated like a married couple;
- Piers and Paul will have to file joint tax returns;
- One of the parties to the union will be burdened with the responsibilities of a 'responsible spouse'.

Piers and Paul's income tax computations will change as follows:

- Piers and Paul will no longer be eligible to declare all their income separately and availing themselves of single rates with respect to all their income.
- Piers and Paul will have the right to opt for the joint computation.

Piers and Paul will have the right to declare their earned income (pension income / salary) separately but all of Piers's unearned income (passive rent) will have to be aggregated to Piers's earned income and taxed accordingly.

### Question 6

The Angelo Zahra case involved the issue of *non bis in idem*, an issue which is very topical in FSS and VAT. Zahra was the director of a company that did not submit FSS forms.

CIR issued administrative penalties against the company and against Zahra, jointly and severally.

Administrative penalties acquired the strength of an executive civil title. Subsequently, and for the same infringement, accused was prosecuted criminally too.

Accused was found guilty both at first and second instance. The Court of Criminal Appeal imposed a penalty which would convert to an effective prison term.

Zahra filed a constitutional application alleging a breach of the *non bis in idem* principle. He claimed that he was being punished twice for the same offence, claiming that administrative penalties were deterrent and punitive amounting to a criminal charge. Zahra's case was dismissed but he appealed.

Constitutional Court decided in favour of Zahra concluding that there had been a violation of the *non bis in idem* principle. It concluded that administrative penalties counted as a criminal charge and that Zahra had been punished twice for the same offence.

The implications of this judgment are far reaching because:

- a) The Constitutional Court is classifying administrative penalties as a criminal charge within the meaning of Article 6 ECHR, implying that the criminal head in Article 6 ECHR applies to cases involving administrative penalties.
- b) The Constitutional Court held that a person against whom administrative penalties have been raised for an infringement may not be prosecuted criminally for the same infringement.
- c) The Constitutional Court is suggesting that a number of articles contained in the VAT Act and ITMA providing that payment of an administrative penalty does not relieve the accused from criminal liability is null and void.

The judgment is also important because it suggests that criminal charges are not inheritable.

Question 7

Distribution of income allocated to the FTA

No refunds in respect of both items.

Distribution of profits allocated to the IPA

No refunds.

Distributions from FIA

€20,000 Passive royalty relieved by the Flat Rate Foreign Tax Credit: 2/3 refund of tax paid.

€20,000 Passive interest relieved by unilateral relief: 2/3 refund of tax payable.

€20,000 consisted in a foreign source capital gain on which no form of double taxation relief was claimed:  
6/7 refund

€20,000 dividend from a participating holding which did not meet the anti-abuse conditions: 5/7 refund.

€20,000 dividend from a participating holding which met the anti-abuse conditions but in respect of which the participation exemption was waived: full refund (100%).

Profits allocated to the MTA consist of local source bank interest received gross of tax

6/7 refund.

Profits allocated to the UA consisting of exempt income received, which is not exempt from tax in the hands of the shareholders

No refund.