Answer-to-Question-_1_

International Holdings Ltd (IHL) is incorporated in Malta, which means that for the purposes of domestic law, it is both resident and domiciled in Malta. However, it is managed and controlled in the United Kingdom, and on the assumption that this also means that the company is effectively managed in the United Kingdom, this means that, for Double Tax Treaty Purposes, the company is considered as a UK tax resident (as per article 4 thereof). Therefore, given the treaty limitations, Malta should not be able to prescribe its right to tax the income of IHL unless this income is derived from a permanent establishment of IHL in Malta or unless the income is otherwise Malta-sourced.

Since the shareholder of IHL is a person who is neither domiciled nor resident in Malta, the deeming provisions put forward by article 43(6) of the Income Tax Act ("ITA") will not take effect if the shareholder avails himself of the refundable tax credit system or the participation exemption. IHL is also able to avail itself of FRFTC as per its Memorandum and Articles.

1. The Maltese restuarant should qualify as a permanent establishment of IHL since it is a fixed place of business (notwithstanding the fact that IHL does not hold the legal title to the building, it still has the right to operate it), thus meaning that income derived therefrom may be brought to charge to tax in Malta as per article 7 of the Malta-UK DTT.

The trading profits should be subject to tax at the rate of 35%, with the net profit of EUR 32,500 being allocated to the Maltese Taxed Account ("MTA")since these are Maltese-sourced taxed profits. Malta tax due is of EUR 17,500.

2. Since IHL is a Maltese tax resident for domestic purposes, it falls to be recognised within the definition of 'recipient' as defined in the Investment Income Provisions. Since the question states that the bank interest was received 'net' by IHL, this indicates that the Maltese bank has indeed withheld tax at 15% on the interest income of IHL (amount of tax withheld is EUR 750). If this is the case, IHL will not be subject to any further tax on this interest income, with the EUR 5,000 being attributed to the company's Final Tax Account ("FTA").

It is important to note that article 11 of the Malta-UK DTT limits Malta's right to tax Malta-sourced interest income arising in the hands of a UK tax resident who is the beneficial owner thereof to a rate of 10% (if the interest income is subject to tax in the UK). However, given that the income seems to have been subjected to a final withholding tax in Malta, no refund of the tax paid may be made prima facie as per the rules governing the Investment Income Provisions. IHL should contact the Maltese Tax Authorities to discuss this matter and it should advice its Maltese banks not to withhold tax on interest payments.

3. The interest income is arising from BVI to a UK tax resident. On this basis, Malta should not have any taxing rights in relation to the income (assuming that this income is not attributable to the permanent establishment of IHL in Malta) as per article 11 of the Malta-UK DTT.

As such, the income should remain untaxed in Malta, and should be attributed wholly (i.e. EUR 10,000) to the company's Untaxed Account.

4. Dividends received from a Maltese tax resident company to a UK tax resident (in this case, IHL) may be brought to charge in Malta as per article 10 of the Malta-UK DTT. Under the full imputation system, the tax paid on the profits underlying the dividend by the distributing company are avialable as a tax credit against the tax charge of the shareholder receiving the dividend. This effectively reduces IHL's tax burden to zero. Dividends received from the MTA of a Maltese company are to be allocated to the MTA. As such, an allocation of EUR 25,000 is made to the MTA in relation to this income stream.

5. As stated in my reply to question 4, dividends received from a Maltese tax resident company to a UK tax resident (in this case, IHL) may be brought to charge to income tax in Malta. Dividend distributions made from the FTA of another Maltese company are to be allocated to IHL's FTA (no further Malta tax is charged with respect to any such dividends). As such, an allocation of EUR 50,000 is made to the FTA in relation to this income stream.

6. It may be argued that brokerage fees arising from the sale of immovable proeprty situated in Malta should be considered as income from immovable property as defined in article 6 of the Malta-UK DTT. On this basis, Malta should be able to assert jurisdiction to tax in relation to this income. Commission fees should be brought to charge to tax in Malta at the rate of 35% in the hands of IHL, with the net profit of EUR 130,000 being allocated to IHL's immovable property account ("IPA") since it should be deemed to arise from immovable property situated in Malta as per rule 5(3) of the Tax Accounts Rules. Malta tax due with respect of this income is of EUR 70,000.

7. From a dometic point of view the capital gain should have been taxable in Malta under article 5

of the ITA. However, the capital gain is arising in Italy (lex citus principle) in the hands of a UK tax resident. On this basis, Malta should not have any jurisdiction to tax this capital gain (assuming that this income is not attributable to the permanent establishment of IHL in Malta) as per article 13 of the Malta-UK DTT.

As such, the income should remain untaxed in Malta, and should be attributed wholly (i.e. EUR 100,000) to the company's Untaxed Account.

8. From a domestic point of view the capital gain should have been taxable in Malta under article 5 of the ITA (although it may have been exempt from Malta tax under article 5(9) of the ITA). However, the capital gain is not arising in Malta and therefore Malta should not have any jurisdiction to tax the capital gain (assuming that this capital gain is not attributable to the permanent establishment of IHL in Malta) as per article 13 of the Malta-UK DTT.

As such, the income should remain untaxed in Malta, and should be attributed wholly (i.e. EUR 150,000) to the company's Untaxed Account.

9. From a domestic point of view, the income attributable to IHL's permanent establishment in Italy would have been taxable (but exempt in terms of article 12(1)(u)(2) of the ITA) in Malta. However, the business profits are not attributable to the permanent establishment of IHL in Malta, thus meaning that, as per article 7 of the Malta-UK DTT, Malta is not able to assert jurisdiction to tax the income.

As such, the income should remain untaxed in Malta, and should be attributed wholly (i.e. EUR 150,000) to the company's Untaxed Account.

It is important to note that Ms X, as the shareholder of IHL, should be able to claim a refund of a 6/7 of the Malta tax paid with respect to incomes that have been attributed to the MTA (and, had there been any profits in the FIA, she would have been able to claim back a portion of the Malta tax paid on these profits as well) once these profits are distributed to her by way of dividend from IHL. IPA profits should be distributed prior to MTA profits. No further tax is payable on distributions made from the FTA and the UA (in the latter case, this is because Ms X does not fall within the definition of receipt as per article 61 of the ITA). The full imputation system is also available with respect to dividends distributed from the IPA and MTA.

---------DO-NOT-EDIT-THIS-DIVIDER----------

Answer-to-Question-_2_

1) Barra Brothers and Vasco and Sons question:

Income Tax Implications
Donations fall within the definition of 'transfer' as defined in article 5(1)(b) of the ITA.

1. and 2. The transfer of the intellectual property rights collectively with that of the letters of engagement may be considered to constitute a transfer of a business for the purposes of article 5 of the ITA (although not defined, the concept of a business is generally understood to mean a transfer of the ability to carry out the business of the enterprise transferring the assets), thus meaning that Vasco & Sons (or its partners, if the partnership has not opted to be treated as a company as per article 27(6) of the ITMA) should be subject to tax on any capital gains arising from the transfer. The provisions of article 5(14), which exempts from tax any capital gains arising in the context of a merger or restructuring, do not seem to wholly apply in this situation, primarily due to the legal structures of the enterprises which are to be merged (assuming that the parnterships have not opted to be treated as companies as per article 27(6) of the ITMA).

4. In addition, the allotment of shares/interest in a partnership (i.e. in Barra Brothers) to the partners of Vasco & Sons may give rise to a deemed transfer of value for the partners in Barra Brothers. However, and on the basis that the partnership in question is not a property partnership and the Commissioner may be satisfied that the deemed capital gain is a result of a bona fide transfer, any deemed capital gains arising in the hands of the partners of Barra Brothers may be exempt from Malta tax.

1., 2., and 4. Given that all the transfers in question are being carried out in the context of a merger, and in order for the capital gains arising in the hands of the Vasco & Sons (or its partners, as aforementioned) to be exempt from Malta tax under article 5(14) (notwithstanding the fact that the particular provisions do not wholly apply in the scenario in question), it is recommended that both partnerships apply for a Ruling in terms of Subsidiary Legislation 123.140. The aim of the Ruling as per the SL is specifically to provide the opportunity to taxpayers to discuss potential mergers (or other types of restructurings) with the aim of exempting all transfers appartaining to the merger from Malta tax. The application for a Ruling (which should be accompanied with a non-refundable application fee of EUR 1,000 payable to the Commissioner for Revenue) should clearly outline the manner in which the assets are to be transferred and the interest in the partnership (Barra Brothers) acquired by the partners of Vasco & Sons, who will, in substance, transfer their business to the same partnership. Particularly, the application for the Ruling should also outline that, although the conditions of article 5(14) of the ITA are not specifically met in this situation, in substance these should apply since the transfers formed part of a merger. Once submitted, the Commissioner for Revenue may request further information, and, he shall then provide his reply within 30 days from the date of the application or from the date on which he is provided with the additional requested information (if this has been so requested). The decision of the Commissioner will be final.

3. The sale of office furniture by Vasco & Sons will not give rise to any capital gains since furniture is not a chargeable asset in terms of article 5 of the ITA. However, Vasco & Sons will have to prepare a balancing statement as per article 24 of the ITA for the assets in respect of which it had claimed capital allowances. The balancing statement will determine whether Vasco & Sons will have a balancing allowance (i.e. a deductible amount, which will arise if the selling price of the furniture is less than the written down value of the asset for tax purpsoes), or a balancing charge (i.e. a chargeable amount, which will arise if the selling price of the furniture is more than the written down value of the asset for tax purpsoes).

5. This will not give rise to any Malta income tax implications.

Duty on Documents and Tranfers Implications

1., 2., and 3. Out of scope of the Duty on Documents and Transfers Act since the items being transferred are not duitable assets.

4. The allotment of interest in a partnership may give rise to a deemed transfer and, as such, to stamp duty implications for the partners of Vasco & Sons. However, since the partnership in question is not a property partnership and if the transfer can be shown to have been made for bona fide purposes, then the deemed tranfer should be exempt from stamp duty in Malta.

However, if the partners do opt to submit an application for a Ruling in terms of S.L. 123.140 as discussed in the Income Tax Implications Section, then, this ought to be included as well so as to provide peace of mind with regards to the applicability of the exemption.

5. This will not give rise to any Malta stamp duty implications.

Value Added Tax Implications

1. The transfer of the letters of engagement should be out of the scope of VAT since it should not qualify as a supply of goods or services made by a taxable person acting as such.

2. The transfer of the intellectual property rights may be considered to constitute a tranfer of a going concern and may therefore not be considered to constitute a supply of goods or services in terms of Item 16 of the Second Schedule of the VAT Act ("VATA") since:
- Barra Brothers, i.e. the transferree, should be registered for VAT purposes under article 10 given that it provides taxable supplies;
- the transferred assets are to be used by the transferee in carrying out the same economic activity as that carried out by the transferor; and
- the transfer may be recorded in the records of the transferor (namely, it may be recorded in the de-registration form provided by the transferor to the VAT Authorities).

3. Vasco & Sons may have to make some re-adjustments with respect to any input VAT claimed on the assets being transferred in terms of the relevant S.L. (covering transfers of capital assets). In addition, the supply of goods made to the auctioneer is exempt without credit supply.

4. and 5. This should be out of the scope of the VATA.

2) Dutch Holdings Limited
Dutch Holdings Limited is incorporated and managed and controlled in Netherlands, thus meaning that it is neither tax resident nor domiciled in Malta. Therefore it will only be subject to tax in Malta with respect to Malta-sourced income and capital gains.

a. Since ML is a 'company in receipt of any benefit under the provisions regulating aid to industries in Malta', dividends distributed from ML to its shreholders (DH) may only be taxed in Malta up to a rate of 15% (subject to the satisfaction of a number of conditions identified in article 10(3) of the Malta-NL DTT.

Dividends distributed to DH from the FTA of ML should not have suffered tax a rate exceeding 15% in the hands of ML (if at all). The distribution of any such dividends should not give rise to any Malta tax implcations for DH.

Dividends distributed to DH from the MTA of ML may have been already subjected to Malta tax at the rate of 15% in terms of the provisions of article 56(20) of the ITA. However, if this is not the case (i.e. if the profits were subject to tax at the rate of 35% in the hands of ML), then, DH should be able to claim back the excess tax paid (i.e. the 20%) under the full imputation system. In addition, DH should also be able to claim a refund of 6/7 of the ACIT in relation to profits distributed to it from the MTA. As long as DH is not beneficially owned by a person being tax resident and domiciled in Malta, then, claiming the refund should not give rise to any Malta income tax implications.

b. Dividends distributed to DH from RL may be taxed in Malta. However, Malta operates the full imputation system wherein the tax paid at company level is used as a tax credit against the tax payable on the dividend distributed to the shareholder. Given this, DH should not have any Malta tax implications with respect to the dividend distributed from RL. Moreover, and as explained in a above, DH should be able to claim a refund of 6/7 of the ACIT in relation to profits distributed to it from the MTA.

c. Malta is proscribed from charging tax in relation to capital gains arising from the transfer of the shares in RL and ML as per article 14(4) of the Malta-NL DTT. However, even if Malta had been able to charge tax on these capital gains, the following would have applied:

DH is a property company itself. However, in order for the exemption put forward in article 12(1)(c)(ii) of the ITA, the companies whose shares are being tranferred should not meet the definition of a property company as defined in article 2(1) of the ITA. Therefore, there should not be any Malta tax payable in relation to any capital gains arising on the transfer of the shares in RL and ML.

---------DO-NOT-EDIT-THIS-DIVIDER----------

Answer-to-Question-_4_

1. The concept of ordinary residence refers to a regular physical presence in a country which is a part of the regular order of a person's life, which has a degree of continuity and which is taken up voluntarily. Mr Smith has been residing in Malta for 200 days during each calendar year for the past 5 years, is employed by a Maltese resident company and is in a relationship with a person residing in Malta. On the basis of these facts, it would appear that Mr Smith should be considered as ordinarily resident in Malta for the purposes of income tax.

2. Mr Smith's domicile of origin is the UK since he was born to UK parents. He does not intend to stay in Malta permanently or indefinitely (since he plans to move back to the UK once his contract with GL expires), and therefore he should not be considered to have acquired a Maltese domicile of choice.

3. Since Mr Smith is considered to be a tax resident of Malta under Maltese law and of the UK under UK law, the tie-breaker rules must be considered.
- Mr Smith has a permanent home in both states, therefore one has to consider the location of his centre of vital interests.

- His family (son and elderly mother) reside in the UK;
- His employment is in Malta;
- He has a relationship with a person who resides in Malta;
- He is a director of a UK company.
On this basis, it is not easy to determine where his centre of vital interests is closer.

- Thus one has to consider his habitual abode to determine where he is tax resident for tax purposes. Given that Mr Smith spends 200 days per year in Malta, it may be argued that he has his habitual abode herein.

As such, Mr Smith should be considered as a tax resident of Malta for the purposes of the Malta-UK DTT.

4. Directors' fees: yes - the treaty states that directors' fees may be taxed in the 'other state' where

the company paying the fees is resident but it does not limit Malta's right to tax this income. Salary: Malta, as the state of the resident may tax his salary unless his employment is being exercised in another State. It appears that Mr Smith's employment income should be wholly taxable in Malta in accordance with the Malta-UK DTT (aticle 15) since the income is paid by a Maltese company for employment services exercised predominantly herein and he spends in excess of 183 days in Malta.

5. Mr Smith is subject to tax in Malta on a remittance basis of taxation, that is, on:
- Malta sourced incomes and capital gains; and
- foreign sourced incomes but only to the extent that these are received in or remitted to Malta.

The directors' fees are foreign sourced income since they are paid by a UK Company and these are not received in Malta since they are received and retained in a Swiss bank account. Therefore no Malta tax is charged on this income.

The employment income is Malta-sourced and as such this will be subject to tax in Malta irrespective of the fact that it has been received in Switzerland and not in Malta.

Bank interest is foreign sourced income which transferred to a bank account in Malta, and therefore this should be subject to tax in Malta.

---------DO-NOT-EDIT-THIS-DIVIDER----------

Answer-to-Question-_6_

1. Management income derived by FAL should be subject to tax at 35%, with the net profit being allocated to the MTA.
Rental income derived by MCIS does not relate to immovable property situated in Malta and as such should be exempt in terms of article 12(1)(s) of the ITA. Thus, the profits should be allocated to MCIS's Untaxed Account.

2. FAL is a normal company to which the general provisions of the ITA should apply. Since it is

both incorporated and managed and controlled in Malta, it is subject to Malta tax on its worldwide income. The applicable tax rate is 35%.

3. MCIS is a CIS licensed under the Investment Services Act. Its income (other than income derived from immovable property situated in Malta or investment income to which article 41A refers) should be exempt from Malta tax as per the exemption put forward in article 12 of the ITA. Income from immovable property situated in Malta would be taxed at a rate of 35%, whilst investment income (other than bank interest, which would be taxed at 15%), is taxable at 10%.

4. The services provided by FAL to MCIS should be considered as taxable supplies taking place in Malta. However, as per Part 2 of the Fifth Schedule of the VATA, the supplies should be considered as exempt without credit supplies.

5. Dividends paid by FAL to its non-resident and non-domiciled sharehodlers should not, effectively give rise to any Malta tax implications in the shareholders hands (due to the functioning of the full imputation system). Moreover, the shareholders should be able to claim a refund of a portion of the Malta tax paid on dividends distributed from the MTA or FIA of the company without any deeming provisions kicking in (so long as these shareholders are not owned and controlled or acting on behalf of a Maltese tax resident and domiciled person). A refund of 6/7 should generally be available if the income of FAL is only that described in the question.

6. Dividends distributed from the UA should not give rise to any Malta tax implications to shareholders which are neither resident nor domiciled (so long as these are not controlled or beneficially owned or are acting on behalf of a Maltese tax resident and domiciled person).

7. The place of supply of services relating to immoavble property is the place where the immovable property is situated. therefore the supplies are out of scope of Malta VAT.

8. Yes.

---------DO-NOT-EDIT-THIS-DIVIDER----------

Answer-to-Question-_3_

2. A holding will be considered to be an equity holding when it gives the holder a right to at least two of the following rights:
a. a right to profits distributed by the company in which the holding is held;
b. a right to distributions made on a liquidation of the company in which the holding is held; and/or
c. voting rights.
A holding will not be considered to be an equity holding if the company in which the holding is held meets the definition of a property company as defined in article 2(1) of the ITA. The definition of equity holding may also be applied to partnerships.

The particiption exemption applies only with respect to participating holdings. As per the definition of a 'participating holding', a participating holding may only be considered as such if it is an equity holding (all the paragraphs to the definition of a participating holding refer to an equity holding).

1.
The replies are based on the assumption that Mr Y is not considered as ordinarily resident or as a resident of Malta for domestic tax purposes.

1. The transfer of immovable property would be subject to income tax in Malta under the property transfers tax (article 5A of the ITA) at a rate of 8% (property acquired post 2004). However, since Mr Y is not a Malta tax resident, he should be able to opt out of article 5A in favour of article 5 of the ITA (which would mean that the tax would be charged on the capital gain made on the transfer of the property (transfer value/consideration less a number of prescribed deductions).
For VAT purposes, the transferor is not a taxable person acting as such and therefore there should not be any VAT implications (none would have arisen even if Mr Y were a taxable person acting as such since the transfer of immovable property is an exempt without credit supply).
Duty would be payable by CB as the transferee at a rate of EUR 5 for every EUR 100 of part thereof.

2. No.

3. Yes. Given that the property will be owned and occupied by CL, secondary allocations would have to be made from MTA or FIA profits to the IPA (EUR 250 per square metres of proeprty which is owned and used). No refund may be claimed under the refundable tax credit system with respect to dividends distributed from the IPA. In addition, rental income received from HL will be attributable to the IPA, which means that no refunds may be claimed in respect to any tax paid in relation to any such income as well. If the rent is charged at a rate which is less than EUR 250/square metres, HL might also have to allocate some of its MTA or FIA profits to the IPA as a secondary allocation.

4. The letting of property to an article 10 registered person is a VAT-table supply. VAT should be charged by CL at the rate of 18%.

5. If he is considered a resident, deeming distribution provisions would kick in (article 43(6) of the ITA).