THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2017

PAPER 2.07 – MALTA OPTION

ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

TIME ALLOWED – 3¼ HOURS

This paper has **three** parts: **Part A**, **Part B** and **Part C**.

You need to answer **five** questions in total.

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.
- Start each answer on a new page and clearly indicate which question you are answering. If you are using the on-screen 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 presentation.
- 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 Parts B and C.
- The first 15 minutes of the exam consists of reading time. You will be allowed to annotate the question paper during this time; however, you will **not** be permitted to start writing or typing your answer, or use a calculator. The Presiding Officer will inform you when you can start answering the questions.

For your information this paper is accompanied by:

- **Agreement between Malta and Italy for the Avoidance of Double Taxation;**
- **Agreement between Malta and the Netherlands for the Avoidance of Double Taxation (including Protocols);**
- **Agreement between Malta and Spain for the Avoidance of Double Taxation; and**
- **Agreement between Malta and the United Kingdom for the Avoidance of Double Taxation**

PART A

You are required to answer BOTH questions from this Part.

1. International Holdings Ltd (IHL) is a company that was incorporated in Malta in 2005. It is managed and controlled in the United Kingdom. IHL's shareholder is Ms X, a person who is neither resident nor domiciled in Malta. IHL holds Ms X's commercial interests in a number of countries, including Malta.

   IHL is specifically empowered to receive income that falls to be allocated to the Foreign Income Account (FIA), under the terms of the objects clause in its Memorandum of Association.

   IHL has accrued the following income:

   1) Trading profits of €50,000 from the operation of a restaurant in Malta. The premises used by the restaurant are owned by an unrelated party;

   2) Net bank interest of €5,000 received from a Maltese bank account;

   3) Gross bank interest of €10,000 received from the company's bank account in the British Virgin Islands. No evidence of foreign tax paid is available;

   4) A net dividend of €25,000 received from the Maltese Taxed Account (MTA) of another company registered in Malta;

   5) A net dividend of €50,000 received from the Final Tax Account (FTA) of a Maltese manufacturing company;

   6) A commission (brokerage fee) of €200,000 from the sale of an apartment in Malta;

   7) A capital gain of €100,000 from the sale of an apartment in Italy. No evidence of foreign tax paid is available;

   8) A capital gain of €150,000, derived from the transfer of a foreign registered trademark to a non-resident company. No evidence of foreign tax paid is available. The company is controlled and beneficially owned directly by Ms X; and

   9) Profits of €150,000 which are wholly attributable to IHL's permanent establishment (PE) in Italy. Profits attributable to the Italian PE were taxed at 27.5%.

   You are required to allocate IHL's distributable profits to its tax accounts using the most tax efficient mechanisms available, and calculate the tax due. You should provide reasons for each allocation. (25)

2.

1) Barra Brothers is a civil partnership which provides audit services. The partners of Barra Brothers have decided to merge their firm with Vasco & Sons, a civil partnership which provides accountancy services. Neither Barra Brothers nor Vasco & Sons are property partnerships. The merger between the two practices will occur as follows (all transactions hereunder will bear the same date):

   1) Vasco & Sons will assign its letters of engagements with clients to Barra Brothers (at no consideration).

   2) Vasco & Sons will assign all of its intellectual property rights (including procedures manuals, marketing materials and technical knowledge) to Vasco & Sons, at no consideration.

   3) Vasco & Sons will sell all of its office furniture to third parties by public auction. Capital allowances had been availed of, with respect to some of the furniture sold at auction. An auctioneer will sell the second-hand furniture acting in his own name, pursuant to a contract under which commission is payable on the sale of those goods by public auction, on behalf of Vasco & Sons. The supply of the goods by Vasco & Sons is made pursuant to a contract under which commission is payable and is an exempt supply in terms of Part Two of the Fifth Schedule to the Value Added Tax Act.

   4) The partners of Vasco & Sons will become partners in Barra Brothers.

   5) The Barra Brothers civil partnership will change its name to Barra Vasco.

   You are required to analyse, in detail, the Income Tax, Value Add Tax and Duty on Documents and Transfers implications of each and every transfer listed above, explaining all options available. (15)

2) Dutch Holdings Ltd (DH) is a company that was incorporated in the Netherlands, and is managed and controlled in the Netherlands. DH owns the following assets:

   1) All shares in Manufacturing Ltd (ML), a company incorporated in Malta that operates in the manufacturing sector. ML's profits available for distribution are held in its Final Tax Account (FTA) and Maltese Taxed Account (MTA). For the purposes of Malta's double taxation agreement (DTA) with the Netherlands, ML is a 'company in receipt of any benefit under the provisions regulating aids to industries in Malta'.

   2) All shares in Restaurants Ltd ('RL'), a company incorporated in Malta which operates a Maltese restaurant. RL's profits available for distribution are held in its MTA.

   3) An office block in Sliema, Malta which is used both by RL and ML.

      DH, ML and RL have agreed that:

      (a) ML will distribute all its distributable profits to DH;
      (b) RL will distribute all its distributable profits to DH; and
      (c) after RL and ML have distributed their profits, DH will transfer its securities in RL and ML to a third party.

   You are required to determine the Income Tax implications, including DTA implications, of transactions (a), (b) and (c). (10)

Total (25)

PART B

You are required to answer THIS question.

3.

1) Cash Box Ltd (CB) is a treasury company that was incorporated in Malta in 2008. CB is managed and controlled from Malta. CB's sole shareholder is Mr Y, an individual who is not domiciled in Malta; for double tax arrangement purposes Mr Y is tax resident in the Netherlands. Mr Y has availed himself of the refundable tax credit system in relation to dividends distributed by CB.

Mr Y is also the sole shareholder of Holdings Ltd (HL), a company that was incorporated in Malta in 2008 and has been managed and controlled in Malta since 2010. HL owns equity shares in a number of companies resident in EU member states, and has established a number of permanent establishments (PEs) in EU member states. HL has been availing itself of the Participation Exemption with respect to dividends distributed by those companies that are resident in the EU.

Both CB and HL have their registered address at Mr Y's apartment in Sliema, Malta, where the companies' board meetings are held. Mr Y bought the apartment in 2010 and stays in the apartment whenever he visits Malta to attend board meetings. Mr Y purchased the apartment in 2008. The apartment is in a special designated area.

Mr Y is considering selling the apartment to CB which will, in turn, lease the apartment to HL. For VAT purposes, HL is considered a taxable person registered under Article 10. Both CB and HL will continue to use the apartment as the venue for their board meetings and as their registered address. Separate parts of the apartment will be allocated to the two companies.

You are required to determine the following:

1) **The tax implications (including Income Tax, VAT, and Duty on Documents and Transfers) of the transfer of the apartment from Mr Y to CB;**

2) **Whether the transfer of the apartment to CB will impact upon HL's right to avail itself of the participation exemption;**

3) **Whether the transfer of the apartment to CB will impact upon the application of the refundable tax credit system to the distribution of CB's profits;**

4) **The VAT implications of the rental agreement between CB and HL; and**

5) **Whether the structure used by Mr Y gives rise to any Maltese Income Tax risks.**

(15)

2) **You are required to explain the concept of 'equity holding' in the Income Tax Act and its relevance in relation to the application of the participation exemption.** (5)

Total (20)

PART C

You are required to answer TWO questions from this Part.

4. Mr Smith is the sole director and financial controller of Gamings Ltd (GL), a Maltese resident company engaged in the provision of gaming services. He also sits on the Board of Directors of Gamings Holdings Ltd (GHL), a UK resident company. Mr Smith spends 200 days during each calendar year in Malta. He spends the rest of the year in the United Kingdom, where he carries out his director's duties for GHL, and on holiday in Spain. Mr Smith owns houses in Malta, the UK and Spain. At the time of Mr Smith's birth, his parents were both domiciled in the UK and he is a British citizen.

Mr Smith has been living in Malta for five years and is considered to be a Maltese tax resident, but does not hold Maltese nationality. In the UK, he is considered to be a UK tax resident. Mr Smith's contract with GL is due to expire in 2020, at which point he will return to the UK. Mr Smith was married to a British citizen until 2014, when he and his wife divorced. He is now in a long term relationship with a Spanish citizen.

Mr Smith has a son from his former wife and a daughter with his current partner. The Courts have refused Mr Smith custody of his son. When Mr Smith visits the UK, he stays in his house there, a property which is also used by his elderly mother and her carer.

When in Spain, Mr Smith shares an apartment with his partner, who does not enjoy traveling and never visits Malta. When in Malta, Mr Smith spends most of his time at work; however, he recently embarked upon a personal relationship with a GL employee and Russian national who resides in Malta.

Mr Smith's annual income consists of a salary paid by GL, director's fees paid by GHL, and annual bank interest. Both the salary and director's fees are paid into Mr Smith's Swiss bank account. Mr Smith's lives off his bank interest, which he transfers to his Maltese bank account.

You are required to answer the following questions, providing reasons for your answers:

1) **For Maltese tax purposes, is Mr Smith considered to be ordinarily resident in Malta?** (3)

2) **For Maltese tax purposes, is Mr Smith considered to be domiciled in Malta?** (3)

3) **For the purposes of Malta's double tax treaty with the UK, what is Mr Smith's residence?** (3)

4) **Does Malta's double tax arrangement with the UK permit the Maltese tax authority to tax Mr Smith's director's fees and salary?** (3)

5) **Will Mr Smith be taxed in Malta on his director's fees, salary and bank interest?** (3)

Total (15)

5. Fund Arrangement Ltd (FAL) is a company incorporated, managed and controlled in Malta. It provides fund management services to Malta Collective Investment Scheme Ltd (MCIS), a scheme which is licensed under the Investment Services Act.

FAL invoices MCIS for services consisting of the management of the scheme, in relation to activities that are essential for the core activity of the scheme. MCIS receives rental income from office buildings situated in the United Kingdom and the Netherlands. MCIS trades in immovable property situated outside Malta, focusing exclusively on the sale of properties in apartments in high rise buildings.

You are required to determine:

1) **The tax accounts to which FAL and MCIS allocate their distributable profits;** (3)

2) **The Income Tax treatment of FAL's income;** (2)

3) **The Income Tax treatment of MCIS's income;** (2)

4) **The VAT treatment of the management fees charged by FAL to CIS;** (2)

5) **The Income Tax treatment of the distribution of dividends from FAL to its non-resident and non-domiciled shareholders;** (2)

6) **The Income Tax treatment of the distribution of dividends from MCIS to its non-resident and non-domiciled shareholders;** (1)

7) **The Maltese VAT treatment of MCIS's rental of office buildings in the UK and the Netherlands; and** (1)

8) **Whether Malta's double tax treaties with the Netherlands and the UK allow the Netherlands and the UK to charge withholding tax on the payment of the rental income.** (2)

Total (15)

6. Malta Skyscrapers Ltd (MFL) is a company registered in Malta that is owned by Dutch Company BV (DC), a Dutch company which is owned in turn by persons who are neither resident nor domiciled in Malta. The board members of DC sit on the board of MFL, which meets once per year. MFL's board always meets in the Netherlands. MFL does not have any Maltese employees.

In 2011, when MFL was incorporated, it encountered significant difficulties in attempting to open a Maltese bank account, so it operates its business via a bank account held with a Dutch bank. In the Netherlands, MFL is considered be a Dutch tax resident.

MFL has purchased a large plot of land in Malta and is currently constructing a high-rise tower which it plans to develop into high-end office premises. It does not have an office in Malta, and its registered office address is the address of its Maltese tax adviser. MFL's management accounts are maintained in the Netherlands by a Dutch accountant.

When the new tower is finished, MFL intends to rent out the properties contained in the building and retain legal ownership of the property. MFL has borrowed the funds needed to develop the property from DC, and is charged interest at a rate of 8% per annum by DC. In addition, DC charges MFL a management fee.

You are required to determine:

1) **MFL's tax residence for the purposes of the Income Tax Act and for the purposes of Malta's double tax arrangement with the Netherlands;** (4)

2) **The Maltese tax treatment of MFL's expected income from the rental of its high-end office space;** (2)

3) **The Maltese tax treatment of DC's interest income;** (2)

4) **The Maltese tax treatment of DC's income from management fees;** (2)

5) **Whether DC may claim a tax refund in relation to the distribution of MFL's rental income; and** (2)

6) **Whether DC should charge MFL VAT on the interest income and management fees.** (3)

Total (15)

7. "Recently, the Maltese Constitutional Court has delivered a number of judgments which have led to major changes to the Maltese tax collection system."

You are required to discuss this statement, with reference to recent case-law. (15)