



Chartered  
Institute of  
Taxation  
Excellence in Taxation

# THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2015

---

## PAPER 2.07 – MALTA OPTION

---

### ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

---

TIME ALLOWED – 3¼ HOURS

---

- You should answer **FOUR** out of the seven questions.
- Each question carries equal marks.
- Start each answer on a new sheet of paper. 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.
- All workings should be made to the nearest month and Euro unless the question requires otherwise.
- Marks are specifically allocated for presentation.
- For your information this paper is accompanied by:

**Avoidance of Double Taxation Arrangement between Malta and France  
(including 1994 Protocol);**

**Avoidance of Double Taxation Arrangement between Malta and Kuwait;**

**Avoidance of Double Taxation Arrangement between Malta and the Netherlands  
(including 1995 Protocol); and**

**Avoidance of Double Taxation Arrangement between Malta and the United  
Kingdom**

1.

- 1) Gozo Ltd is a Maltese registered company that is managed and controlled in Malta by two non-Maltese resident and non-Maltese domiciled individuals who are also the ultimate beneficial owners of the non-Maltese resident company holding the shares in Gozo Ltd. Gozo Ltd receives passive income consisting of dividends, royalties and interest from assets situated outside Malta. In addition, Gozo Ltd has a distribution business in Kuwait. Gozo Ltd maintains a stock of goods or merchandise in Kuwait from which it regularly sells items. Gozo Ltd owns a small apartment in Kercem, Gozo, which occupies a surface area of exactly 130 square metres. Gozo Ltd uses the apartment only four times per year, for its board meetings.

Gozo Ltd received the following profits:

- a) Income of €300,000 from the rental of immovable property situated in Italy. This rental income referred to a tenement leased as a residence to an individual.
- b) A dividend of €100,000 from its fully owned Italian subsidiary company. The dividend received from Italy was net of dividend withholding tax at 10% and Gozo Ltd has evidence of tax paid abroad.
- c) A dividend of €200,000 from a company resident in the Cayman Islands that operates a tourist agency. Gozo Ltd holds 10% of the equity shares in the Cayman Islands company. The Cayman Islands company is not subject to tax in the Cayman Islands.
- d) Malta source bank interest of €1,000 net of final withholding tax.
- e) Business profits of €100,000, attributable to Gozo Ltd's activities in Kuwait.

**You are required to calculate Gozo Ltd's chargeable income, and allocate its distributable profits to its tax accounts using the most tax efficient mechanisms available. You should provide reasons for each allocation, and explain the tax consequences of a distribution from each tax account. (20)**

- 2) Generals Ltd (GL) is a Maltese registered insurance company. GL carries on general business but does not carry on long term business.

**Explain how GL's total income should be ascertained. (5)**

Total (25)

2.

- 1) Double Whammy Ltd (DWL) is a company which was incorporated in the United Kingdom and is managed and controlled in the Netherlands. DWL does not have a permanent establishment in Malta. DWL owns all equity shares in two Maltese subsidiary companies: Double Whammy Estates Ltd (DWEL) and Double Whammy Financing Ltd (DWFL). DWEL is developing a construction site in Valletta, Malta. DWFL is a finance company which lends funds to DWL's subsidiaries in Italy. DWFL did not establish a permanent establishment in Italy. DWL lends funds to DWEL and DWFL, charging both companies interest at commercial rates. DWL's Malta source income consists of interest income paid by DWEL and DWFL, and dividend income paid by DWEL and DWFL. DWEL's income is comprised exclusively of Malta source rental income (rental income derived from a number of Maltese companies). DWFL's income consists of income derived from its financing transactions in Italy.

**You are required to explain:**

- a) **The Maltese tax treatment of income derived by DWL;**
- b) **The Maltese tax treatment of income derived by DWEL; and**
- c) **The Maltese tax treatment of income derived by DWFL.**

**Your explanation should pay particular attention to the Double Tax Treaty, refundable tax credit system and interest deductibility implications of the group's whole structure.** (15)

- 2) Mr Robin, a pensioner who is neither resident nor domiciled in Malta and, for tax treaty purposes, is tax resident in the United Kingdom, owns the following assets situated in Malta:

- 1) An apartment in Sliema by title of ownership;
- 2) A trademark registered on the Maltese trademark register by title of ownership;
- 3) A Model and Design of Manufacture registered in Malta by title of ownership;
- 4) Units in a Maltese resident collective investment (property company) by title of ownership; and
- 5) Tenancy (lease) rights to a garage in Sliema.

Mr Robin is considering ceding his rights to these assets to his cousin, an individual who is ordinarily resident and domiciled in Malta. Mr Robin will not charge a consideration for ceding his rights.

**You are required to determine the Maltese income tax treatment of the cession of each asset, explaining both the domestic tax and tax treaty implications of each transfer.** (10)

Total (25)

3.

- 1) Barranija Ltd (BL) is a company that was incorporated in the Netherlands in 2012. In 2013, BL's board of directors began to hold its meetings in Malta and BL bought office premises in Malta, registering its office premises as its fixed place of business in Malta. BL's chief executive officer and chief finance officer moved to Malta with their staff, and BL established bank accounts in Malta. Maltese resident accountants and auditors are assisting BL's board with all of BL's accounting and statutory requirements. BL retained a permanent establishment in the Netherlands but does not have a permanent establishment anywhere else in the world. BL's Dutch permanent establishment consists of office space and is not a place of management. BL holds a trademark listed on the European Trademark Register, and has licensed the trademark to a Dutch client and to a German client. BL keeps a bank account in Switzerland, and royalties relating to the license agreements with the German client are received and kept in its Swiss bank account. Royalties received from BL's Dutch client are received in Malta. BL's running expenses have been financed by a loan from a shareholder who is neither ordinarily resident nor domiciled in Malta. The loan does not provide for the payment of interest, and is payable on demand.

**You are required to explain:**

- a) **BL's Maltese tax treatment;**
- b) **the tax treatment of dividend distributions paid to the shareholder by BL; and**
- c) **the tax treatment of the shareholder's loan.** (15)
- 2) **Explain the meaning of 'fixed establishment', and the importance of this concept in VAT law.** (10)

Total (25)

4.

- 1) The Income Tax Act uses terms that are used in the OECD Model, including 'permanent establishment' and 'beneficial owner'.

**You are required to explain the use of the terms 'permanent establishment' and 'beneficial owner' in the Income Tax Act.** (15)

- 2) Mr Francois, a French citizen who was born in France and is a beneficiary under the 'old' Permanent Residence Scheme, has been visiting Malta for almost twenty years. Mr Francois owns a house in Sliema, Malta, and spends more than six months in Malta during each calendar year, spending the rest of the year sailing on his yacht in the eastern Mediterranean. Mr Francois's yacht flies a Liberian flag. Mr Francois makes it a point never to go to France. Mr Francois told his daughter, the only member of the family with whom he is close, that when he reaches the age of seventy he intends to sell his boat and take up residence in a retirement home in Switzerland. Mr Francois is considering acquiring a Maltese passport.

**Determine Mr Francois's tax status in terms of the Income Tax Act, and explain whether an acquisition of a Maltese passport could impact on Mr Francois's tax status under both the Income Tax Act and Malta's Double Tax Treaty with France.** (10)

Total (25)

5.

- 1) Given the absence of significant domestic case law in relation to the definition of 'management and control' reference is often made to famous UK precedents.

**You are required to explain briefly the meaning of the terms 'management and control' and their use in the Income Tax Act and the VAT Act. (10)**

- 2) Mr English is a wealthy pensioner who retired in Malta twenty years ago. He established his chief residence in Malta, moving to Malta with his wife and all his personal belongings. Mr English owns a home in Vittoriosa that he has owned and occupied for over ten years, but intends to move to a retirement home. Mr English owns a chalet in Switzerland which he inherited from his father in 1975. Mr English spends one month per year at this chalet. Mr English has for a long time intended to settle in Malta. He is growing old and plans to dispose of most of his assets while he is still alive.

Mr English intends to dispose of his assets as follows:

- a) By selling his house in Vittoriosa through an estate agent;
- b) By donating his chalet in Switzerland to a friend;
- c) By selling his coin collection at auction in Malta;
- d) By selling his securities in his Dutch registered family company (a controlling interest) to his nephew. For the purposes of Maltese tax law, the company is not a 'property company' and all its business interests are outside Malta.

**Determine the Income Tax, Value Add Tax, and Duty on Documents and Transfers implications of the transfers listed above, explaining all options available. (15)**

Total (25)

6.

- 1) Explorations BV, a company resident in the Netherlands, aims to derive gains through a Product Sharing Contract granted by the Government of Malta, by way of licence in accordance with the provisions of the Petroleum Production Act and the Continental Shelf Act. Explorations BV controls a subsidiary, Services BV, which has entered into a contract with Explorations BV under which Services BV shall render services to Explorations BV. Services BV is also resident in the Netherlands. Explorations BV has formally registered a branch in Malta. Services BV has not registered a branch in Malta, but it is expected that one of Services BV's semi-submersible oil rigs will operate in Maltese territorial waters, providing drilling services which are expected to continue for more than 730 days.

**Explain the Maltese tax treatment of Explorations BV and Services BV in terms of the Double Tax Treaty between Malta and the Netherlands, the Income Tax Act, the Duty on Documents and Transfers Act, and the VAT Act. (20)**

- 2) **Is the burden of proof always on the taxpayer in Maltese tax litigation? (5)**

(Total 25)

7.

- 1) Mr Schiffer, a Saint Kitts and Nevis citizen and resident, is an investment banker and a high net worth individual. Mr Schiffer is considering establishing a Maltese company, to operate as a Collective Investment Scheme licensed under the Malta Financial Services Act. The company will hold mining interests in Africa. Mr Schiffer will invest his own money in the company and will be a unit holder. He will also be an employee of the company and an executive member of the board of directors. Mr Schiffer will be designated as the company's chairman. Mr Schiffer does not intend taking up residence in Malta, but will visit Malta to attend the company's quarterly board meetings. Mr Schiffer anticipates that each year he will receive the following payments from the company:

- a) A dividend of €5 million;
- b) A salary of €375,000;
- c) A performance bonus of €150,000;

The Collective Investment Scheme's budgets for benefits in kind to be given to Mr Schiffer comprise:

- (i) Reimbursement of business travel costs totalling €15,000;
- (ii) Private use of the Company's Private Jet. The annual value of the benefit will be €200,000;
- (iii) Private use of the company's chauffeur driven car. The annual value of the benefit will be €1,000. The car will be used to transport Mr Schiffer to and from various locations connected with Mr Schiffer's business;
- (iv) Health insurance that will cost the company €2,000 per annum; and
- (v) An entertainment allowance of €2,500.

The Collective Investment Scheme undertook to pay all of Mr. Schiffer's personal taxes due under the Income Tax Act.

**You are required to:**

- a) **Determine whether Mr Schiffer is entitled to benefit from the Highly Qualified Persons Rules, the Global Residence Programme Rules and/or the High Net Worth Individual Rules. Provide reasons for your decisions.**
  - b) **Determine Mr Schiffer's chargeable income, based on the projected income and costs listed above. You should discuss the tax treatment of Mr Schiffer's anticipated chargeable income.**
  - c) **Explain whether Mr Schiffer's Collective Investment Scheme should be granted tax treaty recognition.** (20)
- 2) Mr Bonello, a sole trader who is both ordinarily resident and domiciled in Malta, intends to establish a bare trust and to transfer all of his business assets to the declaratory trust established by written instrument. Mr Bonello will be the trust's sole beneficiary. Assets to be settled on trust will consist of:
- a) A ten-year-old factory building situated in Malta, in respect of which Mr Bonello has availed himself of initial allowance;

Continued

7. Continuation

- b) A three-year-old commercial motor vehicle, in respect of which Mr Bonello has availed himself of wear and tear allowance and credit for input VAT;
- c) Cash in hand and at a bank; and
- d) Business goodwill.

**You are required to determine the Income Tax, VAT, and Duty on Documents and Transfers tax consequences of the settlement.** (5)

(Total 25)