Answers

Marks

1 (a) Peter

(i) Chargeable income for the year of assessment 2013

1. **Employment with Arab Aviations Limited (AAL)**

Peter is ordinarily resident and domiciled in Malta and so taxable on his worldwide income. However, his employment contract with AAL satisfies the conditions of an overseas employment (Art 56 (17) ITA) and so will be taxable at the flat rate of 15%. 2

	€	Marks
Salary	150,000	0·5
Fringe benefits:		
Rent of apartment	20,000	0·5
Water and electricity	2,500	0·5
Meals (exempt)	0	1
Aircraft type rating exam (not a fringe benefit)	0	1
Uniforms (not a fringe benefit)	0	1
Chargeable income	172,500	

2. **Brokerage fee**

The brokerage fee received by Peter is income from trade or business (Art 4(1)(a)). 0·5

	€	Marks
Brokerage fee	15,000	
Deductions:		
Telephone costs	(300)	0·5
Promotional expenses	(300)	0·5
Business related travel	(1,500)	0·5
Service fee (voluntary payment)	0	1
Chargeable income	12,900	

3. **Rental business**

The income from Peter's short-term holiday rental business is income from trade or business (Art 4(1)(a)). 0·5

However, as he is registered for VAT and does not engage any employees, he can apply the part-time rules to this activity and have the income taxed at a flat rate of 15%. 1

	€	Marks
Rents	15,000	
Deductions:		
Emphyteusis	(500)	0·5
Water and electricity	(2,500)	0·5
Cleaner	(700)	0·5
Wear and tear on furniture (5,000/10)	(500)	1
Interest	(5,000)	0·5
Chargeable income	5,800	

4. **Business as a flying instructor**

The income from Peter's business as a flying instructor is income from trade or business (Art 4(1)(a)). Therefore the loss incurred can be claimed as a deduction against his other taxable income. 1

	€	Marks
Fees	5,000	
Hire of aircraft, including fuel	(6,000)	0·5
Insurance	(1,000)	0·5
Allowable loss	(2,000)	

5. **Dividend received**

A dividend paid out of profits allocated to the final tax account (FTA) is not subject to further tax in Malta. 0·5

Marks

An untaxed dividend paid to a Maltese resident individual is subject to withholding tax (WHT) at 15%. Thus, €3,750 (50,000/2 x 15%) will have been withheld at source from Peter's dividend income. 1·5

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Tutorial notes:

1. *Peter is ordinarily resident and domiciled in Malta because his permanent home is in Malta and he visits Malta regularly.*

2. *With respect to his contract with AAL, Peter satisfies the conditions as set out in Art 56(17) ITA as follows:*

   – *his income is employment income under Art 4(1)(b);*
   – *his contract of employment requires him to serve mainly outside of Malta; and*
   – *although AAL flies aircraft, they are not chartered or leased by a Maltese company.*

3. *The provision of free meals is not taxable provided that the meals are provided in a canteen where meals are provided to the staff generally; thus, assuming such meals are provided to all staff (i.e. all airline pilots and cabin crew), the €1,000 is exempt.*

4. *The cost of providing to employees uniforms and safety clothing when they are under an obligation to wear such uniforms in terms of their contract of employment does not constitute a fringe benefit.*

(ii) Tax payable on submission of tax return for year of assessment 2013

Chargeable income	€	Tax rate	Tax €	Marks
Employment income (overseas basis)	172,500	15%	25,875	0·5
Chargeable income taxable at higher rate				
Brokerage fee	12,900			
Deductions:				
Trading loss	(2,000)			0·5
Alimony payment (not available)	0			1
Home for the elderly (maximum)	(2,500)			1
	8,400	35%	2,940	0·5
Rental business (part-time basis)	5,800	15%	870	
Total tax			29,685	0·5
				4

Tutorial notes:

1. *Peter's employment income taxed under Art 56 (17) ITA is deemed to constitute the first part of his total income for the year and hence any other income earned by Peter will be charged at the highest rate of tax (i.e. 35%).*

2. *The alimony payment is non-deductible because the payment is with respect to the assistance of Peter's son.*

3. *There is no obligation to disclose any of the dividend income received in Peter's tax return.*

(b) Mr Vella

(i) Given that the bank is not withholding tax from the interest, Mr Vella must file a tax return with the Inland Revenue Department (IRD). 0·5

He must also file a separate form TA22 to declare the income earned from his part-time employment, even though the 15% tax thereon will have been paid at source. 0·5

1

				Marks
(ii) Income tax payable for the year of assessment 2013				
Income taxable at progressive rates				
		€	€	
Pension		10,000		0·5
Bank interest		300		0·5
		10,300		
Using single rates of tax				
0 – 8,500	0%	0		
8,501 – 10,300	15%	270		1
			270	
Part time employment income taxable at 15%				
		€		
Watchman services		3,000		
Taxed at 15%			450	1
Total tax charge			720	
				3

(c) Patricia

Patricia may opt to have her income taxed at the flat rate of 15% as being from a part-time employment because her husband is employed full-time. 1

However, only the first €7,000 of her income can be taxed at 15% as the final tax, with the excess of €6,700 (13,700 – 7,000) being added to her husband's chargeable income and taxed at the married rates. The 15% tax paid at source on the excess of this €6,700 is available as a credit against her husband's final tax charge. 1

Alternatively, Patricia may opt to declare all of her income in her tax return and be taxed at the single progressive rates of tax, as follows: 1

	€	
0 – 8,500 at 0%	0	
(13,700 – 8,501) at 15%	780	
	780	0·5

Declaring her income in her tax return using the single progressive rates will be the more beneficial option for Patricia. 0·5

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2 (a) National Company Limited

(i) Tax payable for the year of assessment 2013

		Malta taxed account (MTA)	Foreign income account (FIA) Full imputation	Foreign income account (FIA) FRFTC	Final tax account (FTA)	Untaxed account (UA)	Total	Tax	*Marks*
	Dividends								
1.	Dividend from Maltija 1				50,000				0·5
2.	Dividend from Maltija 2					150,000			0·5
3.	Dividend from Maltija 3		50,000						0·5
4.	Dividend from Malta Listed 1	30,000							0·5
5.	Dividend from Swedish AB				200,000				1
6.	Dividend from Hungary KFT				330,000				1
7.	Dividend from Letterbox Corporation			5,000					1
	Interest								
8.	Interest paid by Maltese bank (net)				706				1
9.	Interest paid by Maltese bank (gross)	330							1
10.	Interest paid by Letterbox Corporation			150,000					1
11.	Interest paid by Swiss bank			150,000					1
		30,330	50,000	305,000	580,706	150,000	1,116,036		
	Expenses – non-deductible								
	Rent					(12,000)			0·5
	Salaries and wages					(50,000)			0·5
	Accountancy fees					(5,000)			0·5
		30,330	50,000	305,000	580,706	83,000	1,049,036		
	MTA – Tax at 35%	10,616							
	Full imputation on €30,000	(10,500)							
		116						116	1
	FIA – Tax at 35%		17,500						
	Full imputation		(17,500)						1
	FIA – Flat rate foreign tax credit (FRFTC) at 25%			76,250					1
				381,250					
	Deductible expenses:								
	Legal fees			(1,000)					0·5
	Feasibility study			(2,000)					0·5
	Interest			(10,000)					0·5
	Chargeable income			368,250					
	Tax at 35%			128,888					
	FRFTC			(76,250)					
				52,638				52,638	1
	Total tax payable							52,754	
									16

(ii) Tax refunds available *Marks*

		€	
6/7 refund on:			
Dividend from Maltija 3	(50,000 x 35% x 6/7)	15,000	1
Dividend from Malta Listed 1	(30,000 x 35% x 6/7)	9,000	1
2/3 refund on:			
FIA income on which FRFTC claimable	(2/3 x €52,638)	35,092	1
Total refund		59,092	3

Tutorial notes:

1 *Dividend from Maltija 1 Limited:*
No further tax is charged on the distribution from the final tax account (FTA) of a Maltese company to another Maltese company and the dividend from Maltija 1 Limited is allocated to the FTA of NCL.

2 *Dividend from Maltija 2 Limited:*
The 15% withholding tax on a distribution from the untaxed account (UA) only applies in the case of a resident individual, not a company. The dividend is allocated to the UA of NCL.

3 *Dividend from Maltija 3 Limited:*
A distribution from the foreign income account (FIA) is subject to the full imputation system and allocated to the FIA of NCL. Furthermore NCL can claim a 6/7 refund.

4 *Dividend from Maltija Listed 1 Limited:*
A distribution from the Malta tax account (MTA) is also subject to the full imputation system and allocated to the MTA of NCL, and NCL can claim a 6/7 refund.

5 *Dividend from Swedish AB Limited:*
The participation exemption applies to this dividend and the dividend is allocated to NCL's FTA.

The holding of NCL in Swedish AB Limited is a participating holding because:

- *it is a holding of equity shares;*
- *Swedish AB Limited is not a property company;*
- *the holding is one of a substantial nature (>10%).*

Also, the anti-abuse conditions are satisfied because Swedish AB Limited is resident in an EU country.

6 *Dividend from Hungary KFT:*
The participation exemption applies (for similar reasons as Swedish AB Limited above) and the dividend is allocated to the FTA.

7 *Dividend from Letterbox Corporation:*
The participation exemption cannot be claimed; although NCL's holding in Letterbox Corporation is a participating holding, the anti-abuse-conditions are not satisfied since:

- *Letterbox Corporation is not resident in an EU country; and*
- *it is not subject to tax of at least 15%; and*
- *it has more than 50% of its income derived from passive interest or royalties.*

The dividend is therefore allocated to the FIA of NCL and taxed at 35%.

The shareholders of NCL are entitled either to claim a 5/7 refund on the dividend distribution from NCL, or to claim the FRFTC and a 2/3 refund of the Malta tax paid. The latter would normally be more advantageous.

8 *Interest paid by a Maltese bank:*
Interest paid by a Maltese bank net of withholding tax is allocated to the FTA and no further tax is charged to NCL.

9 *Interest paid by a Maltese bank:*
Interest paid gross by a Maltese bank is allocated to the MTA and taxed at 35%.

10 *Interest paid by Letterbox Corporation:*
The interest paid by Letterbox Corporation is allocated to the FIA and NCL will be able to claim FRFTC and a 2/3 refund of the Malta tax paid.

11 *Interest paid by a Swiss bank:*
As for the interest in (10), the interest received from the Swiss bank stands to be allocated to the FIA and NCL will be able to claim FRFTC and a 2/3 refund of the Malta tax paid.

	Marks

(b) Evasions Limited

(i) In cases where an incorrect return is furnished to the Commissioner for Revenue or where an omission is made from a return, additional tax is chargeable at the rate of 1·5% per month of the endangered tax, unless the company self-declares the income in an additional return. Evasions Limited should therefore file an additional return (Form AF2) to rectify the omission as soon as possible. 2

If the return is filed within 12 months from the due date, i.e. in this case by 31 March 2013, no additional interest will be incurred. However, after 12 months has elapsed, the company must pay interest of 0·1% per month on the endangered tax from when the payment was due. 2

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(ii) The endangered tax amounts to €7,000 (€20,000 x 35%). 0·5

So, the additional tax charge payable at 1·5% per month will amount to €105 per month. 0·5

The original tax was due on 31 March 2012, therefore if the error is corrected and tax paid on 30 June 2013 then:

	€	
Additional tax due (€105 x 15 months)	1,575	0·5
Interest (€7,000 x 0·1% x 15 months)	105	0·5
	1,680	
		2
		25

3 (a) Paul

1. **Balancing statement on disposal of plant and machinery**

Computers and electronic equipment

	€	€	
Proceeds		1,000	
Cost	10,000		
Wear and tear (10,000 * 25% * 4)	(10,000)		
Written down value		–	
Balancing charge		1,000	0·5

Commercial motor vehicles

	€	€	
Proceeds		20,000	
Cost	150,000		
Wear and tear (150,000 * 20% * 5)	(150,000)		
Written down value		–	
Balancing charge		20,000	0·5

Non-commercial motor vehicles

	€	€	
Proceeds (pro-rata on €14,000)		2,333	
Cost	14,000		
Wear and tear (14,000 * 20% * 5)	(14,000)		
Written down value		–	
Balancing charge		2,333	1

Furniture and fittings

	€	€	
Proceeds		25,000	
Cost	15,000		
Wear and tear (15,000 * 10% * 6)	(9,000)		
Written down value		6,000	0·5
Balancing charge (limited to allowances received)		9,000	1

			Marks
Air conditioners			
	€	€	
Proceeds		4,000	
Cost	10,000		
Wear and tear (10,000 * 16·7% * 3)	5,000		
Written down value		5,000	
Balancing allowance		(1,000)	1

Total chargeable income:

	€	
Computers and electronic equipment	1,000	
Commercial motor vehicles	20,000	
Non-commercial motor vehicles	2,333	
Furniture and fittings	9,000	
Air conditioners	(1,000)	
Chargeable income	31,333	0·5

2. **Factory**

The transfer of immovable property situated in Malta attracts tax at 12% on the transfer value (or market value if higher) under Art 5A ITA. The Income Tax Act provides for certain circumstances whereby the taxpayer can opt out of Art 5A but none of these apply to Paul's disposal of the factory. 1·5

As Paul cannot opt out of Art 5A, the tax charge on the disposal is: €48,000 (€400,000 * 12%). 0·5

3. **Shares in Properties Limited**

As Paul holds all of the shares in Properties Limited, the transfer is a transfer of a controlling interest and is deemed to have been made at the higher of the consideration and the market value of the shares. 0·5

The market value of the shares is the net asset value of the company as per the last financial statements as adjusted for immovable property, interest in subsidiaries (if any) and goodwill. 0·5

	€	
Net asset value	500,000	
Adjustments:		
Immovable property (listed at market value)	0	0·5
Goodwill (285,000 x 2/5)	114,000	1
	614,000	

The market value of the shares is higher than the consideration received.

The holding was acquired after 25 November 1992, so the cost is the actual cost plus an inflation allowance for the property: 0·5

	€	
Cost	200,000	0·5
Inflation allowance (791·02 – 567·95)/567·95 x 55,000	21,602	1
	221,602	

Therefore the chargeable income with respect to the disposal of the shares in Properties Limited is €392,398 (€614,000 – €221,602). 0·5

4. **Shares in Intangibles Limited**

Paul holds all of the shares in Intangibles Limited, so the transfer is a transfer of a controlling interest. Therefore, the basis of calculation is the same as in (3) above. 0·5

	€	
Net asset value	130,000	
Adjustments:		
Immovable property (none)	n/a	
Goodwill (7,754 x 2/4)	3,877	1
	133,877	

The consideration received is higher than the market value.

Therefore, the chargeable income with respect to the disposal of the shares in Intangibles Limited is: €55,000 (€150,000 – €95,000). 1

		Marks

Total tax liability:

	€	
Plant and machinery	31,333	
Disposal of shares in Properties Limited	392,398	
Disposal of shares in Intangibles Limited	55,000	
	478,731	
Tax at 35%	167,556	1
Tax on disposal of factory under Art 5A	48,000	
Total tax liability	215,556	0·5
		16

Tutorial note:

The circumstances in which a taxpayer can opt out of Art 5A and be taxed under Art 5 are as follows:

(a) *The transfer is made not later than seven years from when the property was acquired.*
(b) *The property is situated in a special designated area.*
(c) *The property is co-owned.*
(d) *The property is taken over by the government.*
(e) *The disposal is by a judicial sale by auction or in the course of a winding up by the court.*
(f) *The property is used in business and replaced.*
(g) *The property is owned by non-resident persons.*

(b) Christopher

1. The transfer of the UK shares is a foreign source capital gain which is not taxable in Malta. 0·5
2. The disposal of Christopher's flat in the UK is also a foreign source capital gain which is not taxable in Malta. 0·5
3. The transfer of the shares held in Offshore Limited constitutes a capital gain arising in Malta. As Christopher holds all of the shares in Offshore Limited, the transfer is a transfer of a controlling interest.

	€	
Net asset value	50,000	
Goodwill	32,000	
	82,000	0·5

Market value is higher than the consideration received, therefore the chargeable income is:

	€	
Market value	82,000	
Cost	(1,000)	
	81,000	0·5

Using single rates of tax, the tax payable is:

		€	
0 – 8,500	0%	0	
8,501 – 14,500	15%	900	
14,501 – 19,500	25%	1,250	
19,501 – 81,000	35%	21,525	
Tax payable		23,675	1

4. Gains derived by a UK resident from the disposal of immovable property situated in Malta are taxable in Malta.

   The tax charge on the disposal of the apartment will be €18,000 (€150,000 * 12%). 1

	4
	20

Marks

4 (a) Value added tax (VAT) rates

(i) The supply of accountancy services to a non-taxable person established outside the EU: the place of supply is outside Malta so no Malta VAT is chargeable. 0·5

(ii) Supply of insurance policy to a taxable person established in Malta: 0% *(exempt without credit supply)*. 0·5

(iii) The supply of takeaway foods by a supermarket: 0% *(supply of foods not in the course of catering)*. 0·5

(iv) The supply of textiles to a retailer established outside the EU: 0% *(export – exempt with credit supply)*. 0·5

(v) The supply of jewellery (golden bracelets) to non-taxable persons resident in Malta: 18%. 0·5

(vi) The supply of legal services to a taxable person who has a fixed establishment in Malta: 18%. 0·5

3

(b) Books Limited

Value added tax (VAT) payable for the quarter ended 30 September 2012

	Amount €	VAT rate	VAT €	
Output VAT				
Sale of textbooks to students	100,000	5%	5,000	1
Sale of stationery to non-taxable persons	30,000	18%	5,400	1
Sale of opera tickets to individuals	1,000	5%	50	1
Sale of batteries to taxable persons	20,000	18%	3,600	1
Sale of paper to taxable persons	15,000	18%	2,700	1
	166,000		16,750	
Input VAT				
Electricity	1,800	5%	90	1
Petrol	1,200	18%	216	1
Purchase of shelving	5,000	18%	900	1
Salaries and wages	10,000	n/a	0	0·5
	18,000		1,206	
VAT payable			15,544	0·5
				9

Tutorial notes:

1. *The exemption applicable to books related to education only applies in the context when the educational institution itself sells the books. Therefore no partial attribution is applicable.*
2. *Printed matter is subject to a 5% VAT rate.*

(c) Tuffieha Limited

(i) Tuffieha Limited may file an objection with the Commissioner stating the reasons why it believes the provisional assessment should be reviewed or cancelled within 30 days of the date of the service of the assessment, i.e. by 1 July 2013. 2

(ii) If Tuffieha Limited does nothing, after the lapse of the 30 days the Commissioner has a period of up to six months from the date of the provisional assessment in which to raise a final assessment. 1

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Marks

5 (a) Infrastructures

Chargeable income for the year of assessment 2013

Base year 2011

	€	Marks
Loss before tax	(490,000)	
Add back:		
Depreciation	225,000	0·5
Trench works	200,000	0·5
Geological study	20,000	0·5
Feasibility study	30,000	0·5
Trading loss carried forward	(15,000)	
Annual wear and tear allowances:		
Communication equipment (100,000 x 16·67%)	16,670	0·5
Cable (1,000,000 x 5%)	50,000	0·5
Capital allowances carried forward	66,670	

Basis year 2012

	€	Marks
Profit before tax	196,500	
Add back:		
Depreciation	225,000	
Trench works	25,000	
	446,500	0·5
Less:		
Unabsorbed losses brought forward	(15,000)	0·5
Annual wear and tear allowances for 2012 (as for 2011 above)	(66,670)	0·5
Unutilised capital allowances brought forward	(66,670)	0·5
Chargeable income	298,160	
		5

(b) Internazzjonali Limited

	France	Italy	Total	Marks
	€	€	€	
	(5,000/(1 – 0·335))	(30,000/(1 – 0·275))		
Business profits	7,519	41,379	48,898	2
Malta tax at 35%	2,632	14,483		1
Foreign tax paid:				
(7,519 – 5,000)	2,519			
(41,379 – 30,000)		11,379		1
Malta tax payable	113	3,104	3,217	1
				5
				10

Tutorial note:

The general rule for business profits is that they should be taxed only in the resident state. However, where a branch or other fixed place of business is established in the other state (the source state), then the source state can tax the attributable profits, and the resident state will give a credit for the tax paid in the source state.