Answers

Marks

1 Peter and Jane

(a) **Chargeable income for the year of assessment 2011**

	Peter	Jane	
Director's fees *	30,000		0·5
Fringe benefit company car (working) *	13,200		
Annuity	5,000		1
Salary (TALMALTIN) *	10,000		0·5
Fringe benefits:			
Training package (related training)	0		0·5
Vehicle allowance *	500		0·5
Health insurance (exempt benefit)	0		1
Accommodation in Swieqi (5% of 90,000) *	4,500		1
Bank interest from Maltese bank account (final withholding tax applies)	0		0·5
Commutation of UK pension (exempt)	0		1
Swiss bank interest	3,000		1
Dividend from LuxCo		300,000	0·5
Dividend from Pcom ((15,000 x 100/85) x 100/75)		23,529	1·5
Coin collection (not subject to tax)		0	0·5
Salary *		10,000	1
Fringe benefits:			
Opera tickets (100 x 10) *		1,000	0·5
Annual seminar (related training)		0	0·5
Total	66,200	334,529	

* indicates earned income

Working: Benefit relating to motor vehicle

	€	
Vehicle use value (17% of 100,000)	17,000	0·5
Maintenance value (5% of 100,000) (borne by Peter)	0	0·5
Fuel value (5% of 100,000)	5,000	0·5
	22,000	
Private use percentage (60%)	13,200	0·5
		14

Tutorial note: *Peter and Jane are ordinarily resident and domiciled in Malta, so they are subject to tax on their worldwide income.*

(b) **Tax payable**

Joint computation

Spouses' total Income is (66,200 + 334,529) = €400,729

	€	
0 – 11,900 at 0%	0	
11,901 – 21,200 at 15%	1,395	
21,201 – 28,700 at 25%	1,875	
28,701 – 400,729 at 35%	130,210	
	133,480	0·5
Less: Double tax relief (DTR) on Pcom dividend	(8,529)	1
	124,951	

Tutorial note: *in practice, limitation of the double tax relief credit would apply but has not been considered here because limitation of the relief is an excluded topic.*

		Marks
Separate computation		
Peter is the higher earner of earned income		
Peter		
	€	
Peter's income	66,200	
Jane's unearned income	323,529	
Total income to be taxed in Peter's hands	389,729	1
0 – 8,500 at 0%	0	
8,501 – 14,500 at 15%	900	
14,501 – 19,500 at 25%	1,250	
19,501 – 389,729 at 35%	129,580	
	131,730	
Less DTR on Pcom dividend (as above)	(8,529)	
	123,201	0·5
Jane		
0 – 8,500 at 0%	0	
8,501 – 11,000 at 15%	375	
	375	0·5

Total tax due under separate computation (123,201 + 375) = €123,576

Tax saving by using separate computation (124,951 – 123,576) = €1,375 — 0·5

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(c) Donation of Barbados property

The donation is taxable and as the property is situated outside Malta, 967·066 will give rise to a taxable capital gain as follows: — 0·5

	€	
Transfer value	2,000,000	0·5
Inflation allowance (working)	(386,000)	
Maintenance allowance (0·4% x 1,500,000 x 19 years)	(114,000)	0·5
Acquisition value	(1,500,000)	0·5
Capital gain/loss	0	

Working – Inflation allowance

Yd 2010 (770·07); Ya 1991 (468·21)

$$\frac{770{\cdot}07 - 468{\cdot}21}{468{\cdot}21} \times 1{,}500{,}000 = 967{,}066$$ — 1

But limited to €386,000 — 1

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(d) Sale of shares in LuxCo

The sale will generate a taxable capital gain. — 0·5

The 50% holding represents a holding of a controlling interest, therefore, the transfer value is the higher of the market value of the company and the consideration. — 1

Market value of shares

	€	
Net asset value 2010	50,000,000	0·5
Goodwill	500,000	0·5
	50,500,000	
50% thereof	25,250,000	0·5
Consideration	5,000,000	

Marks

Cost of shares:

	€	
Net asset value (the law prescribes that Net Asset Value must be based on last accounts submitted to the CIR before 18 December 1992) 1992	40,000,000	0·5
50% thereof	20,000,000	

Computation of capital gain:

	€	
Transfer value (market value higher than consideration)	25,250,000	1
Cost of shares	20,000,000	0·5
Capital gain	5,250,000	
		5

(e) Deductibility of gifts

The payment of a fee for a home for the elderly is tax deductible, but only up to €2,000. 1

The payment of the sports fees is tax deductible up to €100 per child. 1

The subsistence payment is not deductible. 1

3

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Tutorial note: *a tertiary education fee would have been deductible.*

2 (a) MINMALTA Ltd

(i) Allocation of profits and tax payable

	Final tax account (FTA) – 1	Final tax account (FTA) – 2	Immovable property account (IPA)	Foreign income account (FIA)	Maltese taxed account (MTA)	Untaxed account (UA)	
	€	€	€	€	€	€	
	56,818	58,823	23,077	6,153,846	15,385	(30,000)	
Tax at 15%		8,823					0·5
Tax at 12%	6,818						0·5
Flat rate foreign tax credit (FRFTC) 25%				1,538,462			0·5
				7,692,308			
Tax at 35%			8,077	2,692,308	5,385		1·5
Less FRFTC				(1,538,462)			0·5
	50,000	50,000	15,000	5,000,000	10,000	(30,000)	

Working – Tax on FIA income

The net tax (Malta tax at 35% less FRFTC) payable on the FIA is 18·75% (15% x 1·25)

Thus, the FIA income (before FRFTC) = 5,000,000/(100 – 18·75)% = €6,153,846; and 1
the net tax payable at 18·75% = €1,153,846 0·5

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(ii) Tax refunds available to shareholders

Each non-resident shareholder will be entitled to tax refunds as follows:

Maltese taxed account (passive income): 50% of 5/7 of 5,385 = €1,923 1

Foreign income account: 50% of 2/3 of 1,153,846 = €384,615 1

Shareholders will not receive any refund as a result of the final tax account or the immovable property account distributions. 1

3

Marks

(iii) Post building acquisition – reallocation of profits

Annual market rent notional profits = €60 x 500 = 30,000 — 1

	FTA – 1	FTA – 2	IPA – 1	IPA – 2	FIA	MTA	UA	Marks
	€	€	€	€	€	€	€	
Allocation as in (i) above	50,000	50,000	15,000		5,000,000	10,000	(30,000)	
Notional allocation				30,000	(20,000)	(10,000)		1·5
Revised totals	50,000	50,000	15,000	30,000	4,980,000	0	(30,000)	

The change in the net dividends payable to each shareholder will be:

	Original	Post acquisition	Marks
	€	€	
FTA	50,000	50,000	
IPA	7,500	22,500	1
FIA	2,500,000	2,490,000	0·5
MTA	5,000	0	0·5
	2,562,500	2,562,500	

Each of the non-resident shareholders' refund entitlement will therefore be reduced by:

	€	Marks
Maltese taxed account (as in (ii) above)	1,923	0·5
Foreign income account: (10,000/2,500,000 x 384,615)	1,538	1
	3,461	6

(b) GGANT Holdings Ltd group

(i) Income tax computations 2011

	GGANT Holdings Ltd (GL) Final tax account (FTA)	GGANT Holdings Ltd (GL) Foreign income account (FIA)	GGANT Holdings Ltd (GL) Maltese taxed account (MTA)	NANU Ltd (NL) Maltese taxed account (MTA)	SUSS 1 Ltd (SL1) Maltese taxed account (MTA)	SUSS 2 Ltd (SL2) Maltese taxed account (MTA)	Marks
	€	€	€	€	€	€	
Accounting profit	500	80,000	100,000	70,000	(90,000)	(150,000)	2·5
Add depreciation					40,000	20,000	0·5
Loss					(50,000)	(130,000)	
Loss surrendered					50,000	120,000	1
Loss claimed			(100,000)	(70,000)			1
Flat rate foreign tax credit (FRFTC)		20,000					0·5
		100,000					
Tax at 35%		35,000					0·5
Less FRFTC		(20,000)					0·5
Tax due	–	15,000					
	500	65,000	–	–	–	–	
Loss carried forward					0	(10,000)	0·5
Capital allowances carried forward					(50,000)	(20,000)	1·0
							8

Tutorial note: *all four companies are members of a group and may surrender losses as the holdings all exceed 50%. However, cross surrendering between MTA/FIA is not permitted, so the loss relief available to GGANT Holdings Ltd is restricted to €100,000.*

	Marks
(ii) An equity holding is defined as a holding of the share capital in a company which is not a property company, when the shareholding entitles the shareholder to at least any two of the following rights (hereinafter referred to as 'equity holding rights'):	1
(a) a right to votes;	0·5
(b) a right to profits available for distribution to shareholders; and	0·5
(c) a right to assets available for distribution on a winding up of the company.	0·5
The concept of equity holding is important for the purposes of the definition of participating holding and consequently the participation exemption.	0·5
	3
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3 (a) A taxpayer can opt out of property transfer tax to pay tax on capital gains in the following circumstances:

		Marks
1.	Where the transfer of property is made not later than seven years after the date of the acquisition of the property and the transferor so elects	1
2.	A transfer of property situated within a special designated area	1
3.	Certain expropriations of property	0·5
4.	Certain divisions of co-owned properties	0·5
5.	Judicial sales	0·5
6.	Where roll-over relief applies	0·5
7.	Certain transfers by non-residents	0·5
8.	Transfers of property pursuant to lease agreements	0·5
		5

(b) Timothy Borg

Tax payable on proposed sales of assets

1. Sliema flat
The transfer is exempt from tax because Timothy has owned and occupied the property for more than three years since the property was acquired in 2007. 1

2. Tarxien house
Timothy inherited the property after 1992, so tax would normally be charged at the rate of 12% on the difference between the value declared in the declaration causa mortis and the transfer value. However, the value declared in *causa mortis* is €500,000 greater than the consideration, so the transfer will not be subject to tax. 1·5

3. Summer residence in Saint Julians
The residence is in a designated area, so Timothy can opt out of property transfer tax and pay capital gains tax.

Option 1 – property transfer tax

	€	Marks
Transfer value	1,200,000	0·5
Tax at 12%	144,000	0·5

Option 2 – capital gains tax

	€	€	Marks
Transfer value of property		1,200,000	0·5
Cost of property	650,000		0·5
Legal fees	1,000		0·5
Inflation (working)	282,792		1
Maintenance allowance (0·4% x 650,000 x 15 years)	39,000		0·5
		972,792	
Capital gain		227,208	
Tax at 35%		79,523	0·5
Therefore, Timothy will opt to pay tax on the capital gain			0·5

Marks

Working – Inflation calculation

Ya Index 1995	536·61
Yd Index 2010	770·07

$$\frac{770{\cdot}07 - 536{\cdot}61}{536{\cdot}61} \times 650{,}000 = 282{,}792$$

4. Listed shares
Gains from the sale of shares listed on the Malta Stock Exchange are exempt from tax. 0·5

5. Government bonds
For the purposes of the law, government bonds are not securities because they do not entitle the holder to participate in the profits of a company, therefore the transfer is outside the scope of tax. 0·5

6. Shares subject to a fixed rate of return
For the purposes of the law, shares subject to a fixed rate of return are not securities, therefore the transfer is outside the scope of tax. 0·5

7. Shares in the family company
The transfer is a transfer of a controlling interest, so the transfer value is the higher of market value and value of the consideration.

Market value

	€	€	Marks
Net asset value as at 2010	60,000		
Goodwill	5,000		
	65,000		
50% thereof		32,500	1
Consideration		25,000	

Computation of capital gain

Market value –higher than consideration	32,500	1
Cost (25,000 x 0·50)	(12,500)	0·5
Capital gain	20,000	
Tax at 35%	7,000	0·5
		12

(c) The assets other than immovable property that are subject to capital gains tax are:

– securities	0·5
– business goodwill	0·5
– business permits	0·5
– copyrights	0·5
– patents	0·5
– trademarks and trade-names	0·5
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Marks

4 Sally and Matthew

(a) SALMAT Partnership Collectif taxable income

	€	€	
Profit for the year		100,000	
Add back			
Depreciation	3,250		0·5
Disallowed wages (not declared for FSS purposes)	5,000		1
Legal fees (capital expense)	750		1
General provision for impaired debts	300		0·5
Specific provision for impaired debts	100		0·5
VAT penalty	1,400		0·5
Fine	0		0·5
Less			
Contribution from father	(20,000)		0·5
		(9,200)	
		90,800	
Less			
Capital allowances (accounting depreciation at correct tax rates)		(3,250)	1
Profits to be shared equally		87,550	6

(b) Personal tax computations

	Sally	Matthew	
	€	€	
Share of profits from the partnership (50:50)	43,775	43,775	0·5
Partnership salaries	20,000	20,000	0·5
Rental income	–	20,000	0·5
Government bond interest (taxed by final withholding)	0	0	0·5
	63,775	83,775	
Deductions			
Alimony paid to Matthew's estranged wife		(2,000)	1
Tertiary education fees		0	1
Further deduction of 20% for rental income		(4,000)	0·5
Chargeable income	63,775	77,775	
Tax at single rates	17,646	22,546	1·5
			6

Tutorial notes:

1. *Tertiary education fees are allowed as a deduction up to €10,000 in the year the student completes his/her studies, so Matthew is not allowed a deduction in the current year.*
2. *Sally has a child who is two years old, but as she is living with Matthew, the father of the child, she cannot claim the married tax rates.*

(c) Conversion of partnership into a limited liability company

Sally and Matthew may convert the partnership into a limited liability company without incurring any tax liability provided that they continue to share in the business in the same proportion, i.e. 50:50. 1

Treatment of trade losses

The trade losses of a limited liability company are carried forward to be absorbed by any future chargeable gains of the company.

Such losses can only be transferred to another company constituted in Malta under the group relief provisions.

Unlike in the case of a partnership, it is not possible to utilise such losses against the personal income of the individual shareholders or vice-versa. 2

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Marks

5 IVA Limited

(a) **Value added tax (VAT) payable/refundable for the relevant quarter**

	Value	Rate of VAT	VAT	
	€	%	€	
Output VAT				
Sales	25,424	18	4,576	1
Total			4,576	
Input VAT				
Purchases	2,542	18	458	0·5
Tobacco and alcohol		Blocked expense	0	1
Commission		Not subject to VAT	0	1
Other expenses	3,305	18	595	0·5
Moveable property	8,475	18	1,525	0·5
Immovable property		Exempt without credit	0	1
Total			2,578	
Amount payable/(refundable) (4,576 – 2,578)			1,998	0·5
				6

(b) An economic activity is defined as any activity carried on by a person (other than an employee) consisting of any one or more of the following:

1. any trade or business 0·5
2. any profession or vocation and the provision of any personal services 0·5
3. the exploitation of tangible or intangible property 0·5
4. the provision by a club, association or organisation (for a subscription or other consideration) of the facilities or advantages available to its members 0·5
5. the admission, for a consideration, of persons to any premises 0·5

In relation to VAT, the concept of economic activity is used to determine whether a person is a taxable person for the purposes of VAT registration and their right of deduction of input VAT. 1·5

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