
Answers

1 Jens Noe

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Mr Noe
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Dear Mr Noe

Malta income tax and stamp duty implications of your proposed property transfers

Following our meeting, we hereunder provide you with our comments on the income tax and stamp duty implications of the proposed transfers of immovable property.

Transfer of luxury apartments

Directly by JN Ltd

Income tax

As stated in the information supplied by you, on the transfer of the first apartment (property) JN Ltd elected to exclude the transfer and all subsequent transfers of properties forming part of the project from the remit of the rules relating to a final tax on property transfers, and therefore to be taxable exclusively on the gains. However, as a result of a change in the law, such an election is ineffective from 1 January 2015, so the transfer of the remaining apartments will no longer fall outside the scope of the property transfer rules.

Therefore, the transfers of the unsold apartments by JN Ltd would be taxable at the standard rate of 8% on their transfer value, i.e. the higher of the market value and the consideration.

Duty on documents and transfers

Duty of €5 for every €100 or part thereof will be due on the transfer value of the apartments.

By JN Ltd to Jay Enn Ltd, and subsequent transfer by Jay Enn Ltd

Income tax

JN Ltd and Jay Enn Ltd are group companies because they are controlled and beneficially owned to the extent of more than 50% by the same shareholders, i.e. yourself. While there is an exemption available in the case of a transfer of assets between group companies as part of a restructuring involving the transfer of the whole or part of a company's business, this requires the property to have been owned for over 12 years. The property was only acquired in 2007, i.e. less than 12 years ago, so the exemption cannot apply in this case.

Therefore, the transfer of the unsold apartments by JN Ltd to Jay Enn Ltd would be taxable at the standard rate of 8% on the transfer value.

On the subsequent transfer of the apartments by Jay Enn Ltd to third parties, the transfers will again be taxable at the standard rate of 8% on the transfer value. This would be the case even if Jay Enn Ltd transfers the apartments within five years of their acquisition because the law provides that, if at any time within the five years preceding the transfer the property was owned by a person related to the transferor, and the property has formed part of a project, the 5% rate for property sold within five years of its acquisition will not apply. JN Ltd and Jay Enn Ltd are deemed to be related because they are directly or indirectly controlled or beneficially owned as to more than 25% by the same persons, i.e. yourself.

Duty on documents and transfers

As stated above, JN Ltd and Jay Enn Ltd qualify as a group of companies, therefore, a transfer of property between them will be exempt from duty provided the strict conditions for the exemption to apply are satisfied. These include that the individual direct and indirect beneficial owners of the companies must be the same, and that each individual must hold substantially the same percentage interests in the share capital and voting rights in each company. Both these conditions are satisfied in this case, so the transfer of the unsold apartments by JN Ltd to Jay Enn Ltd would qualify for an exemption from duty, as long as a certificate confirming the right to the exemption is issued by the Commissioner for Revenue.

However, the subsequent transfers of the apartments by Jay Enn Ltd to third parties will attract duty of €5 for every €100 or part thereof.

By JN Ltd to yourself on liquidation, and subsequent transfer by yourself

Income tax

The exemption available when, in the course of the winding up, a company transfers property to its shareholder, who is an individual owning at least 95% of the share capital and voting rights of the company, will not apply in the case of a transfer of the apartments to yourself on the liquidation of JN Ltd. Although you will have owned 100% of the share capital and voting rights in JN Ltd for a period exceeding five years immediately preceding the date of transfer of the property, and the property consists of a

dwelling house (apartments) which have been held by JN Ltd for a period exceeding five years immediately preceding the transfer, the apartments have not been held as capital assets, but as trading assets.

Therefore, the transfer of the unsold apartments to yourself on the liquidation of JN Ltd would be taxable at the standard rate of 8% on the transfer value.

Furthermore, on the subsequent transfer of the apartments by yourself to third parties, the transfers would also be taxable at the standard rate of 8%. Once again, the 5% rate would not apply even if you transfer the apartments within five years, as you are a related person to JN Ltd, in that you are a shareholder of JN Ltd.

Duty on documents and transfers

The exemption from duty on the transfer of property by a company to its shareholder in the course of a winding up is subject to the same conditions as referred to above for income tax. Therefore, for the same reason, the transfer of the unsold apartments to yourself on the winding up of JN Ltd will not benefit from the exemption, and duty of €5 for every €100 or part thereof will be due on the transfer.

The same duty of €5 for every €100 or part thereof would also apply on the subsequent transfer of the apartments to third parties by yourself.

Transfer of office block

Income tax

The transfer of the office block by Noe BVI Ltd will be subject to the tax on property transfers. The applicable rate will be 10% of the transfer value as the property was acquired by BVI Ltd before 1 January 2004.

Duty on documents and transfers

The transfer of the office block will attract duty of €5 for every €100 or part thereof.

Transfer of palazzo

Income tax

The transfer of the palazzo by Valletta Build Ltd may benefit from the reduced rate of tax of 5% on the transfer of the property, provided either of the following two conditions is satisfied:

- (1) The property was acquired from an unrelated party and sold within five years from its date of acquisition, i.e. before 31 October 2017.
- (2) The property is situated in Valletta, was acquired prior to 31 December 2018, and is being restored, even if the property is transferred more than five years from the date of its acquisition, so long as it is transferred not later than five years from 31 December 2018.

The restoration works must be carried out in accordance with a planning permit issued for this purpose by the Malta Environment and Planning Authority (MEPA), and the works must be completed prior to 31 December 2018 and certified as satisfactory by MEPA before that date.

Duty on documents and transfers

The transfer of the palazzo will attract duty of €5 for every €100 or part thereof.

Transfer of own house

Income tax

The transfer of your house in Naxxar will not qualify for the exemption from income tax on the transfer of one's own residence, given that you no longer live in it as your sole residence.

Such a transfer of immovable property would typically fall within the scope of the final tax regime, and be taxed at the rate of 8% on the transfer value as the final tax. However, as you are not resident in Malta, you have the right to opt out of that regime and be taxed at non-resident rates on the gain derived from the transfer of the property. Provisional tax at the rate of 7% of the transfer value will have to be paid at the time of the transfer. The provisional tax is not available for a refund, meaning that if the tax on the gain is less than 7% of the transfer value, this becomes a final tax.

Confirmation in the form of a statement signed by the Portuguese tax authorities that you are both resident in Portugal, and will be subject to tax in Portugal on any gains from the transfer of immovable property situated in Malta, will need to be provided to the notary who publishes the deed of transfer.

Once the disposal price is known, it will be necessary to determine which option is the more favourable and we will be willing to assist with this if you wish.

Duty on documents and transfers

The transfer of the property will attract duty of €5 for every €100 or part thereof.

While trusting that the above is to your satisfaction, should you have any further questions please feel free to contact me.

Yours sincerely

Tax consultant

2 Charlotte Jewett

As companies incorporated in Malta, Micro MT Ltd, Artisan MT Ltd, Innovation MT Ltd and Jewett MT Hold Ltd are taxable in Malta on their worldwide income.

Taxation of the Innovation MT group

Micro MT Ltd (Micro)

Micro's taxed profits of €975,000 (€1,500,000 – (1,500,000 x 35%)) are allocated to the Maltese taxed account (MTA) initially. Given that Micro owns and uses the factory, a secondary allocation must be made to the immovable property account (IPA). The annual amount to be allocated to the IPA under this secondary allocation is obtained by multiplying the surface area of the factory in square metres by €250. Micro must allocate €1,250,000 (5,000 x €250) to the IPA from the MTA. Given that the original allocation to the MTA in 2015 would have been only €975,000, there would be an excess of €275,000 to be allocated to the IPA of Micro's related companies out of their MTA and foreign income account (FIA) profits. If there are insufficient MTA or FIA profits in these related companies, the excess will be carried forward.

For companies to be related for the purposes of these allocation rules, both companies must be resident in Malta; and either one be a subsidiary of another, or both be subsidiary companies of a third company, resident in Malta. Therefore, the only related companies to Micro will be Artisan MT Ltd and Innovation MT Ltd. Jewett MT Hold Ltd is not related because it is not owned by a company (resident in Malta) but by Charlotte Jewett personally.

Artisan MT Ltd (Artisan)

Artisan's taxed profits of €975,000 are also allocated to the MTA. Given that its related company Micro does not have enough profits allocated to its MTA to absorb the secondary allocation to the IPA, the shortfall of €275,000 will be re-allocated to Artisan's IPA. Therefore, the final allocations to Artisan's tax accounts in 2015 will be €275,000 in the IPA and €700,000 in the MTA.

Innovation MT Ltd (Innovation)

Innovation receives dividends from both Micro and Artisan. These dividends will be allocated to the same tax accounts in Innovation as those from which they were distributed, so €1,250,000 (€975,000 + €275,000) to the IPA and €700,000 to the MTA. Under Malta's imputation system, these dividends will not be subject to further tax. Innovation will not be entitled to claim a tax refund on the tax paid by Micro as all of its profits were allocated to the IPA, nor will it be able to benefit from a tax refund on that part of Artisan's profits allocated to the IPA. In the case of the dividend paid out of the profits allocated to Artisan's MTA, Innovation MT will be entitled to a 6/7ths refund.

Taxation of Jewett MT Hold Ltd (Jewett)

Jewett is the holding company of three foreign entities. Subject to the application of the participation exemption, Jewett will be subject to tax in Malta at the rate of 35% on this income. To benefit from the participation exemption a series of tests must be satisfied.

The first condition is that the holding must be an equity holding. An equity holding is a holding of share capital in a company which is not a property company, where the shareholding entitles the shareholder to at least two of the following rights:

- a right to votes;
- a right to profits available for distribution to shareholders; and
- a right to assets available for distribution on a winding up of the company.

It can be assumed that Jewett's shareholdings in Jersey Invest Ltd (JIL) and Malaysia Invest Ltd (MIL) have these equity holding rights which normally attach to holdings of ordinary shares because the question does not indicate otherwise.

In the case of Jewett's investment in Singapore Fund (SF), the law provides that the Commissioner is entitled to determine that an equity holding exists even where the holding is not a holding of the share capital of a company, as long as it can be shown that in substance there is an entitlement to at least two of the equity holding rights. Therefore, although SF is not set up as a company, this investment can also qualify as an equity holding. It can be assumed it does because the question does not indicate otherwise.

On the presumption that Jewett has an equity holding in all three subsidiaries, the second condition requires the holding to also be a participating holding. Jewett has a 100% holding in both JIL and MIL, which is more than 10% of the equity shares, so entitles it to at least 10% of any two of the equity holding rights. Jewett has a participating holding in these two companies. With respect to its holding in SF, even though Jewett only has a 4% holding, it holds an investment representing a total value, on the date it was acquired, of more than €1,164,000 and has held this holding for an uninterrupted period of more than 183 days. Jewett also has a participating holding in SF.

The third and final condition to be satisfied in order to qualify for the participation exemption, is that either:

(1) the investee company must satisfy any one of the following conditions:

- be incorporated in the European Union;
- be subject to any foreign tax at the rate of at least 15%;
- not have more than 50% of its income derived from passive interest or royalties;

or, where none of these conditions is satisfied,

(2) both of the following two conditions must be satisfied:

- the investment is not a portfolio investment; and
- the body of persons not resident in Malta or its passive interest or royalties have been subject to any foreign tax at a rate which is not less than 5%.

Jewett's holding in JIL satisfies the above conditions because, by actively providing loans, JIL does not derive more than 50% of its income from passive interest. Jewett may benefit from the participation exemption on the dividend income derived from JIL, and it will be allocated to the final taxed account (FTA).

Jewett's holding in Malaysia Invest Ltd will not satisfy the above conditions because MIL was not incorporated in the European Union; is not subject to tax in Malaysia at the rate of at least 15%; all of MIL's income is passive interest; and the investment is both deemed to be a portfolio investment, and the interest income is not taxed at more than 5% in Malaysia. Jewett will not be able to benefit from the participation exemption on the dividend income derived from MIL, and it will be allocated to the foreign income account (FIA).

Jewett can either:

- (i) Apply the flat rate foreign tax credit (FRFTC) provisions, which allow for a notional foreign tax credit of 25%. This results in an effective tax rate of between 7.47% and 18.75%, depending on the level of deductible expenses. Upon a distribution of dividends to Charlotte Jewett, a 2/3rds tax refund can be claimed, thereby reducing the overall Malta tax rate to between 2.49% and 6.25%; or
- (ii) Be taxed at 35% on the income. Upon a distribution of dividends to Charlotte Jewett, she may claim a 5/7ths tax refund, thereby reducing the effective Malta tax rate to 10%.

The level of deductible expenses which Jewett may claim may make the FRFTC option the more favourable, but the tax implications for Charlotte Jewett in her country of residence will also need to be considered.

Jewett's holding in SF satisfies the above conditions because SF does not derive more than 50% of its income from passive interest or royalties. Jewett may benefit from the participation exemption on the dividend income received from SF, and it will be allocated to the FTA.

3 (a) Petra Brown

(i) Income tax implications

As an individual who is not resident and not domiciled in Malta, Petra is taxable in Malta only on income or gains arising in Malta.

Any income derived by a director of a company incorporated and managed and controlled in Malta is deemed to arise in Malta, therefore, any director's fees and any other income Petra derives relating to her position as a director of Luxury Life Ltd are taxable in Malta.

The use of the apartment and yacht for private purposes is deemed to be a taxable fringe benefit to Petra. The value of the benefit is to be determined by reference to the fringe benefit rules, which provide that one must determine the market value of the use of the property (apartment and yacht).

With respect to the use of the apartment, it is necessary to make a distinction between its private use and its use for business purposes. Given that the proportion of use of the apartment weighs heavily towards the private use, under the guidance issued by the Maltese tax authorities, the use of the apartment will be deemed to be wholly a taxable fringe benefit.

The value of the benefit arising from the use of the apartment is 5% of the higher of the market value or the original cost. The value of the fringe benefit would therefore be 5% of the market value ($5\% \times 1,500,000 = \text{€}75,000$) apportioned by the period of use, i.e. one week ($75,000/52 = \text{€}1,442$). Petra's director's fee will be inflated by $\text{€}1,442$.

With respect to the use of the yacht, the value of the benefit for the use of the yacht will be 12% of the higher of the original cost or the market value. In this case the value of the benefit is therefore calculated on the cost ($12\% \times \text{€}2,500,000 = \text{€}300,000$) proportionate to the number of days the yacht was used ($300,000 \times 3/365 = \text{€}2,466$), meaning that Petra's director's fee will be inflated by a further $\text{€}2,466$.

(ii) Value added tax (VAT) considerations

The VAT Act provides that the use of goods forming part of an economic activity of a taxable person registered under Article 10 shall be treated as a supply of services for consideration made by that taxable person. As Luxury Living Ltd is registered under Article 10, the use of both the apartment and the yacht by Petra and her husband will be a taxable supply.

While the letting of immovable property is generally an exempt without credit supply, the letting of accommodation in premises which require a licence in virtue of the Malta Travel and Tourism Services Act is not. Luxury Life Ltd will therefore need to account for VAT on the market value of the use of the property at the reduced rate of 7%.

The use of the yacht is a short-term hiring, given that the yacht is used for less than 90 days. The place of supply of the short-term hiring of a means of transport is where the yacht is put at the disposal of the customer, which in this case is Malta. Luxury Life Ltd will therefore need to account for VAT in Malta at the standard rate of 18%.

(b) Airline Ltd

Supply of air transport for passengers

The transport of passengers is deemed to be a supply of services. The place of supply of services depends on whether the supply is made to a taxable person or a non-taxable person. The place of supply of services to a taxable person is where that taxable person has established their business, and the place of supply to a non-taxable person is where the supplier has established their business.

The general place of supply rule in the case of passenger transport is the place where the transport takes place, proportionate to distances covered. However, the international transport of persons is deemed to be an exempt with credit supply meaning that, while no VAT is due on the Malta–Copenhagen flights provided by Airline Ltd, it may still claim a credit for any input VAT incurred.

Sale of food and beverages

In general, the place of supply of catering services takes place where the services are physically carried out. However, where the catering services are carried out on board an aircraft during the transport of passengers within the European Union, the place of supply is the point of departure of the passenger transport. The point of departure is defined as the first scheduled point of passenger embarkation. In the case of a return trip, the return leg is regarded as a separate transport operation.

This means that all 40 food/beverage items sold on the Malta–Copenhagen leg are deemed to have been supplied in Malta, and are subject to Maltese VAT, even though the flight stopped over in Milan. Similarly, the 30 food/beverage items sold on the Copenhagen–Malta return leg are deemed to have been supplied in Denmark, even though the aircraft stopped over in Milan.

Maintenance of the aircraft

The supply of maintenance services is a supply of works on goods, and the place of supply is where the works are physically carried out. However, as the aircraft is destined to be used by the airline operator (Airline Ltd) for reward chiefly for the international transport of passengers and goods, the maintenance of the aircraft will be an exempt with credit supply and not subject to VAT in Malta.

4 Mr Barone

(a) Income tax treatment

As an individual resident but not domiciled in Malta, Mr Barone is taxable in Malta on all income or gains arising in Malta, and any income arising outside Malta which is received in Malta.

Therefore, Mr Barone will not be taxable in Malta on the €200,000 pension he derives from the Italian fund management company which is paid into his foreign bank account. However, any part of the pension which is remitted to Malta will be treated as income received, and so taxable, in Malta. Under the tax treaty between Malta and Italy, Italy will also be restricted from taxing the pension income because pension income is only taxable in the state of residence of the recipient.

With respect to the income derived from Mr Barone's trading in derivatives, this will be taxable in Malta as income arising in Malta, given that the income generating activity (the actual trading) is carried out in Malta. This is the case even if Mr Barone does not receive the resulting income or gains in Malta.

(b) (i) Application of the highly qualified persons rules (HQPR)

To qualify for the HQPR scheme, Mr Barone must satisfy the conditions set out in the scheme rules and so must prove to the satisfaction of the Malta Financial Services Authority (MFSA) that he holds an eligible office, with a company licensed by the MFSA, under a qualifying contract with a salary of at least €75,000 as adjusted annually in line with the Retail Price Index.

Mr Barone is likely to satisfy these conditions, as he will be employed as head of marketing, a post which qualifies as an eligible office, his employment will be with an MFSA-licensed company, and his salary of €100,000 exceeds the prescribed minimum.

Mr Barone will also need to prove to the satisfaction of the MFSA that:

- he has the necessary qualifications and experience;
- he is employed with the company under a contract of employment under Maltese law;
- he is in receipt of stable and regular resources which are sufficient to maintain him and his family without recourse to the Maltese social assistance system;
- he has adequate accommodation;
- he does not benefit from the exemption on certain fringe benefits available to investment services expatriates;
- he is covered by a sickness insurance policy;
- he is not domiciled in Malta; and
- he is in possession of a valid travel document.

Based on his previous employment experience in Italy and the other information provided about Mr Barone, these conditions are likely to be met.

Assuming Mr Barone is entitled to benefit from the HQPR scheme, he will be chargeable to tax at the rate of 15% on his employment income of €100,000 but without being entitled to any deductions, double tax relief or set off of any kind. As a national of the European Union, he would be able to benefit from the HQPR scheme for an initial period of five years which may then be extended for a further five years.

The HQPR scheme also requires Mr Barone to declare as part of his chargeable income any income received from a person related to his employer.

(ii) Employment exercised outside Malta scheme

Mr Barone's role as head of marketing will require him to perform his duties mainly outside Malta, and when in Malta, to carry out work here in respect of the duties carried on outside Malta. Provided these requirements are specified in his contract of employment, he will be entitled to benefit from this scheme and apply for the reduced rate of 15% on his employment income.

The income chargeable to tax at 15% will be deemed to be the first part of his income. This notwithstanding, the employment exercised outside Malta scheme appears to be the better option financially in that Mr Barone would only be taxable at 15% on the €100,000 he earns in his role (i.e. paying tax of €15,000) and would not need to declare and pay tax on income derived from persons related to his employer.

5 (a) Simulate Ltd

(i) Tax status

Simulate Ltd, as a company resident and domiciled outside Malta, is only taxable in Malta on income or gains arising in Malta. Therefore until such time as it transfers its residence to Malta, it has no tax implications in Malta.

Upon transferring its management and control to Malta, Simulate Ltd will become tax resident, but not domiciled, in Malta, and will therefore be subject to tax in Malta on all income or gains arising in Malta, and all income arising outside Malta which is received in Malta.

Should Simulate transfer its domicile to Malta, it would be taxable in Malta on a worldwide basis at the standard rate of 35% no matter the source of the income and no matter whether the income is received in Malta or not.

(ii) Income derived from the leasing of aircraft and offices

By virtue of the transfer of its residence to Malta, Simulate Ltd may therefore be taxable in Malta on the lease income it derives from the rental of the aircraft and offices to Fly UK. In order to determine whether Simulate Ltd is taxable in Malta, one must determine whether the income it derives arises in Malta or not.

While there are generally no source rules in Maltese law, Maltese law provides that where a person owns, leases, or operates an aircraft which is used or employed in the international transport of passengers or goods, any income derived from the ownership, leasing or operation of the aircraft will be deemed to arise outside Malta, regardless of whether the aircraft may have called at, or operated from, any airport in Malta. However, given that the aircraft leased to Fly UK Ltd is not used for the international transport of passengers or goods, Simulate Ltd cannot place reliance on this source rule.

However, given that the aircraft is based outside Malta, the lessee of the aircraft is not based in Malta and the aircraft appears to mainly be used outside Malta, it may be determined that the income derived from the lease arises outside Malta. If the income arises outside Malta, upon becoming resident in Malta, Simulate Ltd would be taxable in Malta if the lease income is received in Malta.

The income derived from the rental of the office block in the UK will be deemed to arise outside Malta in that the immovable property is situated outside Malta. Again, upon Simulate Ltd becoming resident in Malta, this rental income would be taxable in Malta if it is received in Malta.

(iii) Step-up in value of assets

Given that Simulate Ltd was never resident or domiciled in Malta, upon transferring its tax residence to Malta, it may opt for a step-up in value of all assets which are situated outside Malta. By means of this step-up, the assets would be deemed to have been acquired on the date of the transfer of residence for the purpose of determining any income which would not have been subject to tax had it arisen before the transfer of tax residence. It is important to opt for the step-up of the value of the assets upon transferring the management and control, i.e. before any subsequent re-domiciliation of the company, as the step-up would not be available should Simulate Ltd re-domicile to Malta, given that it would have been resident in Malta prior to becoming domiciled in Malta. This is true even though before the re-domiciliation to Malta, the company would not be taxable in Malta on any gains derived from the transfer of foreign assets as it would be a gain arising outside Malta.

(b) Ray Grech

(i) Applicability of withholding taxes

Double taxation agreements provide for reduced rates of the withholding taxes on dividends, interest and royalties to apply in lieu of the rates normally chargeable under domestic law. The information provided by the accountants on the payments in question is incorrect as it does not take into account the relevant treaty provisions.

Dividend income

In terms of the double tax treaty between Malta and Portugal, dividends paid by a company resident in Portugal to a resident of Malta may be taxed in Portugal. However, under the treaty, the withholding tax charged in Portugal cannot exceed 15% of the gross dividend. The reduced rate of 5% also provided for in the treaty does not apply for distributions of dividends to individuals, only where the recipient is a company which holds more than 25% of the share capital of the company distributing the dividends.

Interest income

In terms of Malta's treaties with Portugal and Greece, interest arising in a contracting state and paid to a resident of Malta may be taxed in the state in which the interest arises. However, the tax imposed on the interest cannot exceed the rate of 10% of the gross interest payment.

Interest is normally deemed to arise where the payer is resident. There is an exception whereby the interest is deemed to arise in the state in which the PE is situated. This applies where the person paying the interest has a permanent establishment (PE) in connection with which the debt on which the interest is paid was incurred, and such interest is borne by the PE.

In the case in question, Portugal may impose withholding tax at the rate of 10% on the interest payment.

Royalty income

In terms of the double tax treaty between Malta and Portugal, royalties arising in Portugal and beneficially owned by a resident of Malta are only taxable in Malta. Portugal is therefore restricted from taxing the royalty income.

(ii) Applicability of EU Directives

As the payments are not made between related companies, neither the Parent-Subsidiary Directive nor the Interest and Royalties Directive can be applied.

	<i>Available</i>	<i>Maximum</i>
1 Transfer of luxury apartments		
Directly by JN Ltd		
Income tax		
Election ineffective: post 1 January 2015 transfers	1	
Transfers within the property transfer rules	0.5	
Taxable at 8% on transfer value	0.5	
Definition of transfer value	0.5	
Duty		
5% rate on transfer	0.5	
Transfer to Jay Enn Ltd, and subsequent transfers by Jay Enn Ltd		
Income tax		
JN Ltd and Jay Enn Ltd are group companies	1	
Definition of group	0.5	
Intra-group transfer tax relief	1	
Property owned for less than 12 years	0.5	
No intra-group transfer tax relief	0.5	
Taxable at 8%	0.5	
Subsequent transfer also taxable at 8%	0.5	
Even if transferred by Jay Enn Ltd within five years	0.5	
Owned by person related to transferor	0.5	
Reference to project	0.5	
5% rate does not apply	0.5	
JN Ltd and Jay Enn Ltd related	1	
Definition of related	0.5	
Duty		
Group companies relief	0.5	
Same individual direct or indirect shareholders	0.5	
Substantially the same percentage interest	0.5	
Conditions are satisfied: exemption applies	1	
Certificate confirming required from Commissioner	0.5	
Subsequent transfers 5% rate	0.5	
JN Ltd on liquidation and subsequent transfer by Mr Noe		
Income tax		
Exemption upon transfer of property on a winding up	0.5	
To a shareholder who is an individual	0.5	
Owning at least 95% of share capital and voting rights	0.5	
Share capital and voting rights held for more than five years	0.5	
Type of property qualifies: dwelling house	0.5	
Asset held for more than five years	0.5	
Capital asset	0.5	
Exemption does not apply: trading asset	1	
Taxable at 8%	0.5	
Subsequent transfer also taxable at 8%	0.5	
5% rate does not apply: Mr Noe and JN Ltd related parties	1	
Duty		
Exemption has same conditions as for income tax	1	
5% rate on transfer	0.5	
5% also applies on subsequent transfers	0.5	
Transfer of office block		
Income tax		
Taxable at 10%	1	
Acquired before 2004	0.5	
Duty		
5% rate on transfer	0.5	

	<i>Available</i>	<i>Maximum</i>
Transfer of palazzo		
Income tax		
Reduced rate of 5%	0.5	
Sold within five years of acquisition	0.5	
Property in Valletta	0.5	
Acquired prior to 31 December 2018	0.5	
Restored	0.5	
Even if transferred after more than five years	0.5	
If transferred not later than five years from 31 December 2018	0.5	
Work in accordance with MEPA permit	0.5	
Completed before 31 December 2018	0.5	
Certified as satisfactory by MEPA	0.5	
Duty		
5% rate on transfer	0.5	
Transfer of own house		
Income tax		
Not a transfer of his sole residence, so taxable	1	
Final tax regime would apply	0.5	
Taxable at 8%	0.5	
Not resident	0.5	
Can opt out	0.5	
Be taxed on gain at non-resident rates	0.5	
Provisional tax at 7%	0.5	
Confirmation required from Portugal on residence and payment of tax on gain	1	
Need to determine the more favourable option	0.5	
Duty		
5% rate on transfer	0.5	
	<u>36.5</u>	31
Professional marks		
Format and presentation of the letter	2	
Effectiveness of communication	<u>2</u>	<u>4</u>
		<u>35</u>

	<i>Available</i>	<i>Maximum</i>
2 Taxable on worldwide income	0.5	
Micro MT Ltd		
Taxed profits of €975,000	0.5	
Allocated to MTA	0.5	
Owns and uses factory	0.5	
Secondary allocation to IPA	0.5	
Surface area by €250	0.5	
Allocation of €1,250,000	0.5	
Excess of €275,000	0.5	
Allocation to related companies	1	
Any insufficiency carried forward	0.5	
Resident in Malta	0.5	
Subsidiary of the other or both subsidiaries of a third	0.5	
Artisan and Innovation only/not Jewett Hold	0.5	
Artisan MT Ltd		
Allocated to MTA	0.5	
Re-allocation to IPA €275,000	1	
Final allocation to MTA €700,000	0.5	
Innovation MT Ltd		
Allocated to same tax accounts	0.5	
IPA €1,250,000 and MTA €700,000	0.5	
Not subject to further tax in terms of the imputation system	0.5	
No refund on profits allocated to the IPA	1	
6/7ths refund re profits allocated to the MTA	0.5	
Jewett MT Hold Ltd		
Must have an equity holding	0.5	
Not a property company	0.5	
At least two of three rights	0.5	
Right to votes	0.5	
Right to profits available for distribution	0.5	
Right to assets available for distribution on a winding up	0.5	
Holdings in Jersey Invest Ltd and Malaysia Invest Ltd equity holdings	0.5	
Commissioner can determine position re non-company holdings	0.5	
Holding in Singapore Fund can also be equity holding	0.5	
Participating holding	0.5	
More than 10% holding	0.5	
Participating holding in Jersey Invest Ltd and Malaysia Invest Ltd	0.5	
Singapore Fund: investment of €1,164,000	0.5	
Period of more than 183 days	0.5	
Participating holding in Singapore Fund	0.5	
Incorporated in EU	0.5	
Taxed at at least 15%	0.5	
Not more than 50% is passive interest or royalties	0.5	
If none, then both the following conditions	0.5	
Not a portfolio investment	0.5	
Taxable at at least 5%	0.5	
Holding in Jersey Invest Ltd satisfies conditions	0.5	
Actively provides loans/not less than 50% is passive interest or royalties	0.5	
Allocated to FTA	0.5	
Holding in Malaysia Invest does not satisfy conditions	0.5	
Not incorporated in EU	0.5	
Taxed at less than 15%	0.5	
Income is passive interest	0.5	
Portfolio investment	0.5	
Taxed at less than 5%	0.5	
Allocated to FIA	0.5	
FRFTC: notional 25% tax credit	0.5	
Effective tax rate depending on deductible expenses	0.5	
2/3rds refund	0.5	
Taxed at 35%	0.5	
5/7ths refund	0.5	

	<i>Available</i>	<i>Maximum</i>
Also need to consider Charlotte's tax position in country of residence	0.5	
Holding in Singapore Fund satisfies conditions	0.5	
Less than 50% passive interest and royalties	0.5	
Allocate to FTA	0.5	
	<u>32</u>	<u>25</u>
3 (a) (i) Income tax		
Taxation of an individual neither resident nor domiciled	0.5	
Source of director's fees	0.5	
Taxable in Malta	0.5	
Use of apartment and yacht: fringe benefit	1	
Value of benefit	0.5	
Private use v business use	0.5	
Use of apartment will be deemed wholly private use	1	
Determination of value:		
5% of market value	0.5	
Proportion of days use in the year	0.5	
Computation	1	
Use of yacht: market value	1	
Computation	1	
	<u>8.5</u>	6
(ii) VAT		
Supply of services	1	
Taxable supply	0.5	
Letting of immovable property – generally exempt without credit	0.5	
MTA licence – not exempt	0.5	
Reduced rate of 7%	0.5	
Computation	0.5	
Yacht used for short-term hiring: less than 90 days	1	
Place of supply where put at the disposal of the customer: Malta	1	
Standard rate of 18%	0.5	
Computation	0.5	
	<u>6.5</u>	5
(b) Supply of air transport		
Transport of passengers: supply of services	0.5	
Place of supply to taxable person: where customer's business established	0.5	
Place of supply to non-taxable person: where supplier's business established	0.5	
Place of supply of passenger transport	1	
International transport: exempt with credit	1	
Sale of food and beverages		
Place of supply of catering services: where physically carried out	0.5	
On board aircraft within the EU	0.5	
Place of supply: point of departure	0.5	
First scheduled point of embarkation	0.5	
Return leg is a separate transport operation	0.5	
Outward flight place of supply is Malta	1	
Return flight place of supply is Denmark	0.5	
Maintenance of aircraft		
Place of supply: where physically carried out	1	
Used mainly for international transport	1	
Exempt with credit	0.5	
	<u>10</u>	9
		<u>20</u>

	<i>Available</i>	<i>Maximum</i>
4 (a) Income tax		
Taxation of individuals resident but not domiciled in Malta	0.5	
Not taxable on pension income	0.5	
Unless remitted to Malta	0.5	
Italy restricted from taxing in terms of treaty	1	
Trading of derivatives taxable in Malta: carried out in Malta	1	
True even if income/gains not received in Malta	<u>0.5</u>	4
(b) (i) Highly qualified person rules		
Eligible office	0.5	
With company licensed by the MFSA	1	
Minimum salary: €75,000 adjusted annually by RPI	1	
Head of marketing: eligible office	0.5	
Company is licensed	0.5	
Salary exceeds minimum	0.5	
Necessary qualifications and experience	0.5	
Contract of employment in terms of Maltese law	0.5	
Stable and regular resources	0.5	
Adequate accommodation	0.5	
Does not benefit from investment services expatriates exemption	0.5	
Sickness insurance	0.5	
Not domiciled in Malta	0.5	
Valid travel document	0.5	
Should satisfy based on previous employment, etc	0.5	
15% rate on employment income	1	
No deductions, tax relief or set off	0.5	
Benefit for a period of five years	0.5	
May be extended for further five years	1	
Must declare all income from related person to employer	<u>0.5</u>	12
(ii) Employment exercised outside Malta		
Will perform duties mainly outside Malta	0.5	
Work carried on in Malta in respect of such work outside Malta	0.5	
Eligible provided contractual requirement	0.5	
Rate of 15% on employment income	0.5	
As first part of his income	0.5	
Computation	1	
Pension not taxable in Malta	<u>0.5</u>	<u>4</u>
		<u>20</u>

	<i>Available</i>	<i>Maximum</i>
5 (a) (i) Tax status		
Taxation of non-resident companies	0.5	
Taxation upon transferring management and control to Malta	1	
Taxation upon re-domiciliation to Malta	<u>0.5</u>	2
(ii) Income derived from leasing of aircraft and offices		
Aircraft used in international transport of passengers or goods	0.5	
Income derived from owning, leasing or operation of aircraft: source rule	0.5	
Regardless of whether aircraft calls at Malta	1	
Not international transport of passengers or goods	1	
Cannot place reliance on this source rule	0.5	
Aircraft based outside Malta	0.5	
Lessee is not based in Malta	0.5	
Aircraft used mainly outside Malta	0.5	
May be deemed that income arises outside Malta	0.5	
Only taxable if lease income received in Malta	0.5	
Rental of office block: arises outside Malta	<u>1</u>	
	<u>7</u>	6
(iii) Step-up in value		
Simulate never resident or domiciled in Malta	0.5	
Step-up upon transferring resident to Malta	0.5	
Working of step-up	1	
Opt for step-up immediately after transferring residence	1	
Cannot opt after re-domiciling as would have been resident in Malta	1	
True even though not taxable in Malta on gains	<u>1</u>	
	<u>5</u>	4
(b) (i) Withholding taxes		
Dividends may be taxed in Portugal	0.5	
Withholding tax cannot exceed 15%	1	
5% rate does not apply: distribution to an individual	0.5	
Interest may be taxed in state in which it arises	0.5	
Withholding tax cannot exceed 10%	1	
Interest arises where payer is resident	0.5	
If interest incurred in connection with PE, arises where PE is situated	1	
Portugal may impose withholding tax at 10%	0.5	
Greece is restricted from taxing	0.5	
Portugal is restricted from taxing	<u>0.5</u>	
	<u>6.5</u>	6
(ii) EU Directives		
Payments not made between related companies	1	
Neither Directive applies	<u>1</u>	<u>2</u>
		<u>20</u>