
Answers

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Ms Emma Gammon
15, St Barbara Bastions
Valletta

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Dear Ms Gammon

Following our meeting, we hereunder provide you with our comments on the tax implications of the various planned transfers of immovable property.

(i) Malta income tax and duty on documents and transfers implications of the transfer of immovable property by the three companies

Sale of property by Park Ltd

Income tax

Upon the transfer of the first luxury apartment, Park Ltd elected to exclude the transfer, and thus all subsequent transfers of properties forming part of the project, from the remit of the rules relating to final tax on property transfers, and therefore to be taxable exclusively on the gains. However, as a result of the change in the law, such an election is ineffective from 1 January 2015. Therefore, the transfer of the remaining five apartments will no longer fall outside the scope of the property transfer rules. The fact that the apartments are in a special designated area does not change the fact that the property transfer rules will apply.

Accordingly, the transfers of the unsold apartments will be taxable at the standard rate of 8% on their transfer value, i.e. the higher of the market value and the consideration. Should the properties be transferred for €900,000 each, the company will therefore suffer tax of €72,000 (€900,000 x 8%) per apartment.

Duty on documents and transfers

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

Sale of property by Hatt Ltd

Income tax

Prima facie, the sale of the luxury apartments, a 'new' project, would be subject to the transfer of property transfer final tax system and subject to tax at the rate of 8%.

However, if Hatt Ltd does issue debt securities to the public, which debt securities are listed on the Malta Stock Exchange, in order to fund the development and construction of the apartments, then on the first transfer, Hatt Ltd may elect to exclude the transfer (and all subsequent transfers of the project) from the property transfer final tax system. Should such an election be made, Hatt Ltd would be taxable in Malta at the rate of 35% on the gain realised from each transfer. Provisional tax at the rate of 8% would be due on each transfer based on its transfer value, which may be set against the tax charged on the gain from the sale of the property. If there is any excess after the offset, then, subject to certain limitations, the excess can be set against any tax charged on the company's other sources of income in that year of assessment.

Based on the information given, the provisional tax due on the sale of each apartment would be €80,000 (€1,000,000 x 8%), and the tax due on the gain would be €70,000 ((€1,000,000 – €800,000) x 35%). Excess provisional tax of €10,000 is potentially available to set against the tax on Hatt Ltd's other income, subject to the following limitation:

$$\begin{aligned}\text{Unutilised provisional tax} &= (0.625 \times A) - B \\ &= (0.625 \times 80,000) - 70,000 \\ &= -€20,000\end{aligned}$$

Given that the unutilised provisional tax formula will result in a negative amount, the difference of €10,000 will not be refundable to Hatt Ltd, and the total tax incurred on the sale of each apartment will be €80,000, the same as would be incurred under the property transfer final tax system. This implies that the opt-out is of no benefit.

Duty on documents and transfers

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

Sale of property by Zeppos Ltd

Income tax

As a company resident and domiciled outside Malta, Zeppos Ltd is taxable only on any income or gains arising in Malta. For this purpose, the sale of immovable property situated in Malta would be deemed to be sourced in Malta, making it taxable in Malta.

The transfer of the office block will fall within the scope of the property transfer final tax system, and be taxable at the standard rate of 8%. While non-residents may opt out of the final tax system and be taxed at 35% on the gain derived from the transfer

of property, this opt-out is not available to Zeppos Ltd, because it is owned or controlled by an individual resident in Malta, i.e. yourself.

Zeppos Ltd will therefore suffer tax of €64,000 ($€800,000 \times 8\%$) on the sale of the office block.

Duty on documents and transfers

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

(ii) Income tax and duty on documents and transfers on the acquisition and sale of the Mosta house

'Acquisition' of the Mosta house

Duty on documents and transfers

The acquisition of the Mosta house by way of a *causa mortis* transfer would generally attract duty at the rate of 5%. However, no duty on documents is due in this case because the house was your mother's ordinary residence for the three years immediately prior to her death.

Sale of the Mosta house

Income tax

The exemption from tax relating to the sale of a dwelling house which is owned and occupied by the transferor for at least three consecutive years can be extended to yourself, because you inherited the property from your mother (a direct ascendant) who had owned and occupied the property as her own residence for over three years. The law provides that the period which your mother owned and occupied the house will be deemed to be that owned by yourself.

However, this extension only applies with respect to ownership. In order to benefit from the exemption, you must live in (occupy) the house for a period of three years. Should you sell the house prior to living in it for three years, you will be subject to tax at the rate of 12% of the transfer value.

Duty on documents and transfers

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

(iii) Income tax and duty on documents and transfers implications of the transfers of other immovable properties owned personally

Sale of Mellieha Bay apartment

Income tax

The transfer of the apartment in Mellieha Bay may benefit from the reduced rate of 5% if it is sold within five years from its acquisition. In order for this reduced rate to apply, the transfer must not be a transfer of property forming part of a project.

Duty on documents and transfers

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

Sale of Birgu house

Income tax

The transfer of the house in Birgu will be subject to the final tax system and taxed at the standard rate of 8%. The reduced rate of 5% will not be available because, although the property is situated within an urban conservation area and was restored subject to a permit issued by MEPA, the restoration works started before 1 January 2015.

Duty on documents and transfers

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

(iv) Taxation of dividends derived from Park Ltd, Hatt Ltd and Zeppos Ltd

The profits from the sale of the property by Park Ltd will be allocated to the final tax account (FTA).

The profits from the sale of the property by Hatt Ltd will also be allocated to the FTA, even if Hatt Ltd opts out of the property transfer final tax system.

Dividends paid out of profits allocated to the FTA are not subject to further tax nor is any refund available.

Although Zeppos Ltd would be subject to the property transfer final tax system, its taxed profits cannot be allocated to the FTA as it is not resident in Malta. As an individual resident but not domiciled in Malta, you are taxable in Malta on all income or gains arising in Malta and all income arising outside Malta which is received in Malta. Should you receive the dividends distributed by Zeppos Ltd in Malta you will be subject to tax in Malta, but may claim underlying tax relief for any tax suffered in Malta (i.e. the 8%) as well as any tax suffered in Cyprus.

While trusting that you found our comments above useful, should you have any further queries please do not hesitate to contact us.

Yours faithfully

Tax Consult Limited

2 The Filflair group of companies

As companies incorporated in Malta, Filflair Holding Ltd, Filflasias Ltd and Filfla Holding Ltd are taxable in Malta on their worldwide income. Filfinance Ltd and Filfeurope Ltd, being companies incorporated outside Malta but tax resident in Malta, are taxable in Malta on all income arising in Malta and any income (but not capital gains) arising outside Malta which is received in Malta.

Taxation of Filfinance Ltd

Filfinance Ltd provides loans to companies resident in Malta. Therefore, as the payers of the interest are all tax resident in Malta, all of the company's interest income will be deemed to be Malta source income. The interest income will therefore be subject to tax in Malta at 35%, i.e. tax of €490,000 (ignoring expenses), despite being paid into a bank account outside Malta. The taxed profits will be allocated to Filfinance Ltd's Maltese taxed account (MTA).

Taxation of Filflasias Ltd

Filflasias Ltd is taxable in Malta on a worldwide basis, so the lease income will be taxable at the standard rate of 35%. Filflasias Ltd will be entitled to deduct the €5 million interest paid to Filfinance Ltd in respect of the loan provided for the acquisition of the aircraft, as well as an annual deduction in respect of wear and tear of the aircraft over the following minimum periods:

- Aircraft airframe: minimum of six years;
- Aircraft engines: minimum of six years;
- Aircraft engine or airframe overhaul: minimum of six years;
- Aircraft interiors and other parts: minimum of four years.

Should the wear and tear allowance be taken in order to match the accounting depreciation of 20 years, this would imply an annual wear and tear allowance of €7,500,000. This, together with the interest charge of €5,000,000 payable to Filfinance Ltd, would result in taxable income of €2,500,000 per annum (assuming no other expenses), and a tax charge of €875,000.

Given that the lease of the aircraft will be considered active income, the taxed profits will be allocated to Filflasias Ltd's MTA.

Taxation of Filfeurope Ltd

The income derived from the leasing of the aircraft to the Maltese company is income derived from aircraft which are used in the international transport of passengers or goods. In view of Malta's source rule for such income, it will be deemed to be sourced outside Malta as the income is received into a bank account outside Malta, so will not be subject to tax in Malta. Accordingly, the income would be allocated to Filfeurope Ltd's untaxed account (UTA).

However, given that Filfeurope Ltd owns and uses offices in Malta, 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 office in square metres by €250, i.e. €50,000 (200 x €250) must be allocated to the IPA. This allocation would normally be made from either Filfeurope Ltd's MTA or foreign income account (FIA). Since Filfeurope Ltd does not have either an MTA or FIA, the amount of €50,000 would need to be allocated to the IPA of a related company in the Filflair group, from their MTA or FIA, and any excess carried forward.

Similarly to Filflasias Ltd, Filfeurope Ltd will also be entitled to claim a wear and tear allowance on the aircraft over the period of 20 years. However, given that the income is not taxable in Malta, because it arises outside Malta and is received into a bank account outside Malta, no benefit will be derived from such an allowance in the current year. The annual wear and tear allowance of €9,000,000 (assuming it is claimed over 20 years) can be carried forward to future years, until such time as there is chargeable income against which to offset it.

Taxation of Filfla Holding Ltd

Filfla Holding Ltd holds an investment in Comair Lux Ltd. In order to determine whether the company can benefit from the participation exemption, a series of tests must be satisfied.

The first condition is that the holding must be an equity holding, i.e. 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.

As these rights are those normally attaching to ordinary shares, it can be assumed that Filfla Holding Ltd's shareholding in Comair Lux Ltd will satisfy these equity holding rights and that the holding will be an equity holding.

The second condition requires the holding also to be a participating holding, satisfying one of six criteria. Given that Filfla Holding Ltd has the right to appoint a director to the board of Comair Lux Ltd, this test is also satisfied.

The third and final condition is also satisfied as Comair Lux Ltd is incorporated in the European Union.

One may conclude that the participation exemption will apply to the dividend income received.

The fact that the dividend distribution to Filfla Holding Ltd entitles Comair Lux Ltd to a deduction against its chargeable income does not disqualify Filfla Holding Ltd from benefitting from the participation exemption, as the anti-abuse provision only applies where the Parent-Subsidiary Directive would apply. In the case at hand, Filfla Holding Ltd would not benefit from the Parent-Subsidiary Directive as it does not qualify as a parent, given that its shareholding is less than 10%, so the anti-abuse rule is not relevant.

As the conditions for the participation exemption are satisfied, the income will be allocated to the final taxed account (FTA).

Tutorial note: *In practice, one would also need to consider whether the IRD guidance on the 'Tax Treatment of Interest from a Loan' would disqualify the income from being treated as income from a participating holding.*

Taxation of Filflair Holding Ltd

Filflair Holding Ltd receives dividends from Filfinance Ltd, Filflasias Ltd, Filfeurope Ltd and Filfla Holding Ltd, all of which are tax resident in Malta. As such, under Malta's imputation system, no further tax will be payable on these dividends and they will be allocated to the same tax accounts in Filflair Holding Ltd as those from which they were distributed, i.e. the MTA and/or IPA for the dividends from Filfinance Ltd and Filflasias Ltd, depending which company the IPA profits are allocated to under the secondary allocation; the UTA for the dividends from Filfeurope Ltd; and the FTA for the dividends from Filfla Holding Ltd.

Filflair Holding Ltd will be entitled to claim a six-sevenths tax refund of the Malta tax paid on the dividends received from its subsidiaries' MTA. There is no right to a refund on any profits distributed from its subsidiaries' IPA, and there is no Malta tax to refund on profits distributed from their FTA and UTA. The refund will be allocated to Filfla Holding Ltd's UTA.

3 (a) Consult Ltd

If Consult Ltd acquires the furniture prior to completion of its value added tax (VAT) registration, it will not be able to provide Ufficii di Lusso Spa with its VAT number. Accordingly, the Italian supplier will treat Consult Ltd as a person not registered for VAT in Malta, and apply the distance sale regime to the furniture, as it will be an intra-community supply of goods which is transported on behalf of the supplier.

The distance sale regime applies where the following conditions are satisfied:

- the goods sold should not:
 - (i) be a new means of transport; or
 - (ii) goods which are installed or assembled by or on behalf of the supplier in Malta; or
 - (iii) goods which are supplied under a transaction subject to a margin scheme on second hand goods, works of art, collectors' items and antiques in Italy; and
- when the transport ends in Malta, the goods are acquired by a person who is not registered under Article 10 or Article 12.

The supply of the furniture will therefore qualify as a distance sale. However, the total value of the goods (furniture) supplied and transported to Malta by Ufficii di Lusso Spa exceeds the annual distance sale threshold of €35,000. Therefore, Ufficii di Lusso Spa will be required to register for VAT in Malta and charge Consult Ltd Maltese VAT at 18% on the supply.

If Consult Ltd acquires the furniture after completion of its VAT registration and provides Ufficii di Lusso Spa with its VAT number, then the transaction will qualify as an exempt intra-community supply in Italy, where the transport starts, and an intra-community acquisition by Consult Ltd in Malta, where the transport ends. An acquisition qualifies as an intra-community acquisition when there is the right to dispose, as owner, of goods which are transported by or on behalf of the supplier from another Member State (i.e. in this case Italy) to the person buying the goods in Malta.

Ufficii di Lusso Spa will not need to register for VAT in Malta, and Consult Ltd will need to account for Maltese VAT at 18% by way of the reverse charge method.

(b) The letting of immovable property does not qualify as an exempt without credit supply in the following cases:

- (1) The letting or provision of accommodation in any premises which is required to be licensed in virtue of the Malta Travel and Tourism Services Act, or in a holiday camp or camping site.
- (2) The letting of premises and sites for parking vehicles where such premises or sites have been designated by the Commissioner as parking areas.
- (3) The letting of permanently installed equipment and machinery and the hire of safes.
- (4) The letting of property by a limited liability company to a person registered under Article 10 for the purpose of the economic activity of that other person.
- (5) The letting of immovable property for not more than 30 days by a taxable person in the course of an economic activity, except for:
 - (i) the letting referred to in paragraphs (1), (2), (3) and (4) above;
 - (ii) the letting of space for artistic and cultural activities;
 - (iii) the letting for the purposes of habitation of any premises which are not required to be licensed in virtue of the Malta Travel and Tourism Services Act;
 - (iv) the letting of premises used or intended to be used as garages, stores or similar uses.

(c) Global Transport Ltd

The transport of passengers and goods is treated as a supply of services. However, the general rules for determining the place of supply do not apply to transport services, except in the case of the transport of goods to taxable persons.

Transport of passengers

The place of supply of passenger transport is the place where the transport takes place, proportionate to the distances covered. In terms of Maltese VAT law, the international transport of persons is exempt with credit.

Transport of goods

The place of supply of the transport of goods to a non-taxable person follows a similar rule to that for passenger transport, i.e. where the transport takes place, proportionate to the distances covered. However, where the transport qualifies as an intra-community transport of goods, the place of supply to a non-taxable person is the place of departure. Maltese value added tax (VAT) at 18% will therefore be chargeable on the transport of all goods leaving from Malta.

Intra-community transport of goods refers to the transport of goods where the place of departure and the place of arrival are in two different EU Member States. The place of departure is the place where the transport of the goods actually begins, i.e. when the goods leave from Malta it is Malta, even though there may be a stopover in another country, and the place of arrival is the place where the transport of goods actually ends, i.e. if goods loaded in Malta are to be delivered to Poland, but there is a stopover in the Czech Republic, the place of arrival is Poland.

Tutorial note: *When goods are transported from another country to Malta, the VAT laws of the respective country would need to be determined.*

The transport of goods to taxable persons follows the general rule, i.e. the place of supply is where the customer has established their business.

4 (a) Tax Credit (Women Returning to Employment) Rules

Mary Curmi and Joanne Dingli are both entitled to benefit from the *Tax Credit (Women Returning to Employment) Rules* (the 'Rules'). Mary qualifies as she is a woman with a child under 16 (her 17-year-old child cannot be counted) and will return to employment after having been absent for at least five years prior to her return. Joanne qualifies as she is a woman with children who intends continuing in employment.

The Rules provide for two options in such cases:

1. A tax credit of €2,000 which is set against the tax on the woman's employment income. The tax credit is available in respect of every qualifying child, and may be availed of over a period of two consecutive years commencing from the year of return to employment. However, where there is more than one child, the period is extended to the number of children plus one year, subject to a maximum of €2,000 per year. The income in respect of which the tax credit is granted will be deemed to constitute the first part of the woman's income.
2. A tax credit equivalent to the tax chargeable on the gains or profits from the employment for a given year, subject to a maximum of €5,000. The tax credit is available in respect of every qualifying child. Where a woman qualifies for the tax credit in respect of more than one child, the tax credit can be availed of in consecutive years until it is exhausted. The income in respect of which the tax credit is granted will be deemed to constitute the first part of the woman's income. Women exercising this option are taxable on the basis of separate computation.

Mary Curmi

With an annual salary of €17,000, prior to accounting for the tax credit Mary would be liable to tax of €1,435 ((€17,000 x 25%) – €2,815) annually. She has one qualifying child, so under option 1, she can utilise the €2,000 tax credit to pay no tax in Year 1, and can carry forward the remaining €565 (€1,435 – €2,000) to Year 2 as a credit against the €1,435 tax payable in that year, resulting in a tax charge of 870 (€1,435 – €565) in Year 2. Under option 2, she would again pay no tax in Year 1, but would be subject to tax of €1,435 in Year 2. Therefore, option 1 (€2,000 credit) is the preferred option.

Joanne Dingli

With an annual salary of €20,000, prior to accounting for the tax credit Mrs Dingli would be liable to tax of €2,275 ((€20,000 x 25%) – €2,725) annually. She has two qualifying children, meaning that under option 1, she can utilise the €2,000 tax credit to pay €275 (€2,275 – €2,000) tax in both Year 1 and Year 2. Under option 2, she would pay no tax in either Year 1 and Year 2 as the annual tax payable is less than €5,000. Therefore option 2 (maximum €5,000 credit) is the preferred option.

(b) Part-Time Work Rules

The *Part-Time Work Rules* (the 'Rules') apply to individuals who:

- (i) are receiving full-time instruction at a university, college or other similar educational institution; or
- (ii) are serving an apprenticeship with a view to qualifying in a trade or calling; or
- (iii) derive employment income chargeable to tax as employment or pension income;

and have other income derived from part-time work.

However, in the case of a married couple, the Rules apply to either spouse where at least one of the spouses satisfies the above conditions.

Josephine Mallia may benefit from the Rules because her husband, Kevin, derives employment income; but Corinne Borg will not be entitled to benefit from the Rules because her husband, George, does not derive employment income, but derives trading income.

5 (a) Rovelli Ltd and Rovelli Holding Ltd

(i) Taxation of dividend distribution to Rovelli Ltd

The provisions of the Malta–Italy Double Tax Treaty (DTT) will override the withholding tax provisions in Italian domestic law. Rovelli Ltd owns more than 5% but less than 25% of the shares in Rovelli Italy Ltd, therefore, in terms of the DTT between Malta and Italy, the distribution of dividends will be subject to withholding tax of 15%. However, as both companies are incorporated in the European Union (EU), the provisions of the Parent–Subsidiary Directive may apply.

In order for the Parent–Subsidiary Directive to apply, Rovelli Ltd and Rovelli Italy Ltd must both satisfy the definition of a company in terms of the Directive, i.e. both companies must:

- take a form which is listed in *[Annex I, Part A of]* the Directive;
- be resident in Malta and Italy respectively in terms of the tax laws of their respective States, and not be tax resident in a country which is not a member of the EU in terms of a tax treaty concluded by their country of residence; and
- be subject to a tax which is listed in *[Annex I, Part B of]* the Directive, without the possibility of an option, or of being exempt or subject to any other tax which may be substituted for any of these taxes.

Assuming that both the companies qualify as a company for the purposes of the Directive and they are subject to tax in their respective jurisdiction, these conditions are satisfied.

In order to lose residence in terms of a double tax treaty, the place of effective management of a company must be in the other treaty country. The fact that Malta has not concluded a double tax treaty with Thailand implies that, even though Rovelli Ltd has its place of effective management in Thailand, the second condition is still satisfied.

Given that a 10% shareholding is sufficient to constitute a parent–subsidiary relationship in terms of the Directive, Rovelli Ltd qualifies as a parent company and Rovelli Italy Ltd qualifies as a subsidiary for this purpose. Therefore, in terms of the Parent–Subsidiary Directive, any dividends distributed by Rovelli Italy Ltd to Rovelli Ltd must be exempt from withholding tax in Italy.

(ii) Taxation of payment in respect of the profit participation loan to Rovelli Holding Ltd

The Parent–Subsidiary Directive provides that, where a parent company (i.e. Rovelli Holding Ltd) receives a dividend distribution from its subsidiary, the dividend should not be subject to tax to the extent that the distribution is not deductible by the subsidiary. However, where the distribution results in a deductible payment for the subsidiary (i.e. Rovelli Ltd), the distribution should be taxed in the hands of the parent (receiving) company. This means that the payment received by Rovelli Holding Ltd in respect of the profit participating loan will not be exempt in terms of the Parent–Subsidiary Directive and so will be taxable in Luxembourg.

(b) Penguin Malta Finance Ltd

The provisions of the Malta–Spain Double Tax Treaty (DTT) will override the withholding tax provisions in Spanish domestic law. Therefore, in terms of the DTT between Malta and Spain, any interest payments should be subject to withholding tax in Spain at a maximum rate of 10%.

However, given that Penguin Malta Finance Ltd and Penguin Software Ltd are incorporated in EU jurisdictions, it is necessary to consider whether the provisions of the EU Interest and Royalties Directive apply, as if so, the interest payments would be exempt from withholding tax.

In order to apply the Interest and Royalties Directive, the companies must fall within the definition of a company as defined in the Directive. As this definition is similar to that in the Parent–Subsidiary Directive, this condition may be deemed to be met.

Furthermore, Penguin Malta Finance Ltd and Penguin Software Ltd must qualify as associated companies. Companies qualify as associated companies if:

- one company has a direct minimum holding of 25% in the capital of the other company; or
- both companies are **directly** held as to at least 25% by the same (third) company.

In order for this second condition to be satisfied, it would be necessary for Penguin Holding Ltd to have a direct holding in both Penguin Malta Finance Ltd and Penguin Software Ltd. This is not the case, so neither of the necessary conditions is satisfied.

Accordingly, the Interest and Royalties Directive will not apply and any interest payments made by Penguin Software Ltd to Penguin Malta Finance Ltd will be subject to withholding tax at the rate of 10% in terms of the DTT between Malta and Spain.

	Available	Maximum
1 (i) Sale of property by Park Ltd		
Income tax		
Election no longer effective after 1 January 2015	1	
Special designated area opt out also not available	0.5	
Standard rate of 8% on transfer value applies	1	
Calculation of tax due €72,000	0.5	
Duty on documents and transfers		
Duty of 5%	0.5	
Sale of property by Hatt Ltd		
Income tax		
New development, final tax system applies	0.5	
Issue of debt securities to the public	1	
Listed on Malta Stock Exchange	0.5	
To fund development and construction	0.5	
Can elect to exclude transfer from final property tax	1	
Taxable at 35% on each subsequent transfer	0.5	
Provisional tax of 8%	0.5	
Offset provisional tax against tax on gain	0.5	
Offset provisional tax against other income	1	
Calculation of provisional tax €80,000	0.5	
Calculation of tax due on gain €70,000	0.5	
Identify excess subject to limitation €10,000	0.5	
Calculation of limitation –€20,000	1	
No refund available, negative amount	0.5	
Total tax €80,000 regardless of opt out	0.5	
Duty on documents and transfers		
Duty of 5%	0.5	
Transfer of property by Zeppos Ltd		
Income tax		
Taxable on income or gains arising in Malta	0.5	
Sale of property is sourced in Malta	0.5	
Taxable at 8%	1	
Non-residents can opt out of final tax system	0.5	
Zeppos Ltd cannot opt out as shareholder is resident in Malta	1	
Calculation of tax €64,000	0.5	
Duty on documents and transfers		
Duty of 5%	0.5	
	<u>18</u>	16
(ii) Acquisition of Mosta house		
Duty on documents and transfers		
Duty of 5% based on normal rule	0.5	
Exemption available	0.5	
Owned by mother	0.5	
As her ordinary residence	0.5	
For last three years	0.5	
Sale of Mosta house		
Income tax		
Three years owned and occupied exemption can be extended to Emma	1	
Inherited from a direct ascendant	0.5	
Mother owned and occupied house for more than three years	0.5	
Deemed to have been owned by Emma	0.5	
Extension only applies to ownership	1	
Must live in/occupy house for three years	0.5	
12% rate applies if sale within less than three years	0.5	
Duty on documents and transfers		
Duty of 5%	0.5	
	<u>7.5</u>	6

	<i>Available</i>	<i>Maximum</i>
(iii) Sale of Mellieha Bay apartment		
Income tax		
Reduced rate of 5% available	1	
If sold within five years	0.5	
Not a transfer of property forming part of a project	0.5	
Duty on documents and transfers		
Duty of 5%	0.5	
Sale of Birgu house		
Income tax		
Taxable at 8%	1	
May not benefit from 5% rate	0.5	
Within an urban conservation area	0.5	
Restored subject to permit issued by MEPA	0.5	
But restoration works started prior to 1 January 2015	0.5	
Duty on documents and transfers		
Duty of 5%	0.5	
	<hr/> 6	5
(iv) Park Ltd: profits from sale allocated to FTA	0.5	
Hatt Ltd: profits also allocated to FTA	0.5	
Even if it opts out of the final tax system	0.5	
Dividends from FTA not subject to further tax	0.5	
Zeppos Ltd cannot allocate to FTA as non-resident	1	
Emma's liability to Malta tax	0.5	
Dividends subject to tax in Malta if received in Malta	0.5	
Claim underlying tax relief	0.5	
Including for any Cyprus tax	0.5	
	<hr/> 5	4
Professional marks		
Format and presentation of the letter	2	
Effectiveness of communication	2	
	<hr/> 4	4
		<hr/> 35

	<i>Available</i>	<i>Maximum</i>
2 Resident companies taxable on worldwide income	0.5	
Resident but not domiciled companies: remittance basis of taxation	0.5	
Filfinance Ltd		
Interest Malta source as from resident companies	1	
Tax at standard rate of 35%/€4,900,000	0.5	
Allocated to MTA	0.5	
Filflasia Ltd		
Taxable at standard rate of 35%	0.5	
Interest paid to Filfinance Ltd deductible	0.5	
Annual deduction for wear and tear	0.5	
Rates for aircraft, engines and interiors	1	
Annual wear and tear €7,500,000	0.5	
Taxable income €2,500,000	0.5	
Tax payable €875,000	0.5	
Allocated to MTA	0.5	
Filfeurope Ltd		
Leasing of aircraft for international transport of passengers and goods	0.5	
Sourced outside Malta	0.5	
Lease income not subject to tax in Malta as not received in Malta	0.5	
Allocated to the untaxed account	0.5	
Owns and uses offices in Malta	0.5	
Secondary allocation to IPA required	1	
Reallocation of €50,000	0.5	
From MTA/FIA	0.5	
Group allocation required	0.5	
If not carry forward	0.5	
No current benefit from wear and tear allowance	0.5	
Can carry forward until there is chargeable income	1	
Filfla Holding Ltd		
Equity holding	0.5	
Not a property company	0.5	
Two of the three rights	0.5	
Equity holding rights listed	1	
Such rights normal with ordinary shares	0.5	
Can assume conditions satisfied/equity holding	0.5	
Participating holding	0.5	
Right to appoint a director	1	
Incorporated in the EU	0.5	
Participation exemption applies	0.5	
Deduction in source state does not disqualify	0.5	
Limited to situations where Parent-Subsidiary Directive applies	1	
Would not benefit from Directive as only a 5% holding	1	
Allocation to FTA	0.5	
Filflair Holding Ltd		
No further tax payable	0.5	
Same tax account allocation as in subsidiaries	0.5	
Allocation per company primary allocation	0.5	
IPA secondary allocation	0.5	
Refund of 6/7ths re profits distributed from MTA	0.5	
No right to refund re profits distributed from IPA	0.5	
No further tax to refund on dividends from FTA and UTA	0.5	
Refund allocated to UTA	0.5	
	<u>27.5</u>	<u>25</u>

	<i>Available</i>	<i>Maximum</i>
3 (a) Distance sale regime applies	0.5	
Goods not installed by the supplier in Malta	0.5	
Goods not acquired by a person registered under Article 10 or 12	0.5	
Total value exceeds distance selling threshold of €35,000	1	
Ufficii di Lusso Spa must register for VAT in Malta and charge Maltese VAT	1	
Intra-community supply in Italy	0.5	
Where the transport starts	0.5	
Intra-community acquisition in Malta	0.5	
Where the transport ends	0.5	
Definition of intra-community acquisition	1	
No requirement for Ufficii di Lusso Spa to register for VAT in Malta	0.5	
Consult Ltd to account for VAT by way of reverse charge	1	
	<u>8</u>	7
(b) Licensed by MTA	0.5	
Holiday camp or camping site	0.5	
Parking areas	0.5	
Permanently installed equipment or machinery	0.5	
Hiring of safes	0.5	
Letting of property by a limited company	0.5	
To a person registered under Article 10	0.5	
For the purpose of their economic activity	0.5	
Letting of property for more than 30 days	0.5	
By a taxable person in the course of an economic activity	0.5	
Exceptions (4 x 0.5)	2	
	<u>7</u>	6
(c) Supply of services	0.5	
Specific rules for the place of supply, except for supplies to taxable persons	0.5	
Place of supply of passenger transport	0.5	
Proportionate to distance travelled	0.5	
International transport is exempt with credit	1	
Place of supply of transport of goods to a non-taxable person	0.5	
Intra-community transport of goods	1	
Malta VAT at 18% on all goods leaving Malta	1	
Place of arrival and place of departure in two different Member States	1	
Definition of place of departure	0.5	
Definition of place of arrival	0.5	
Place of supply of transport of goods to a taxable person	0.5	
	<u>8</u>	7
		<u>20</u>

	<i>Available</i>	<i>Maximum</i>
4 (a) Has a child under 16	0.5	
Return to employment after being absent for over five years	0.5	
Has a child and intends continuing in employment	0.5	
Tax credit of €2,000	1	
For every qualifying child	0.5	
To be availed of over two years from return to employment	0.5	
Extended where more than one child to number of children plus one	1	
Cap of €2,000 per year	0.5	
First part of the woman's income	0.5	
Credit equal to tax chargeable on gains/profits from employment	0.5	
Maximum of €5,000	1	
For every qualifying child	0.5	
If more than one child, credit can be availed of in consecutive years until exhausted	1	
First part of woman's income	0.5	
Taxable under separate computation	0.5	
Ms Curmi		
Tax on €17,000	0.5	
One qualifying child	0.5	
Option 1: no tax in Year 1	0.5	
Carry forward €565	0.5	
Tax charge of €870 in Year 2	0.5	
Option 2: no tax in Year 1	0.5	
Full tax of €1,435 in Year 2	0.5	
Option 1 is preferable	0.5	
Mrs Dingli		
Tax on salary	0.5	
Two qualifying children	0.5	
Option 1: tax charge of €275 in Year 1 and Year 2 (2 x 0.5)	1	
Option 2: no tax in Year 1 or Year 2	1	
Option 2 is preferable	0.5	
	<u>17</u>	15
(b) Persons who can benefit from rules (3 x 0.5)	1.5	
Have income from part-time work	0.5	
Married couples can apply to either spouse	1	
Josephine eligible, Kevin has employment income	1	
Corinne not eligible, George does not derive employment income	1	
	<u>1</u>	<u>5</u>
		20

	<i>Available</i>	<i>Maximum</i>
5 (a) (i) Treaty overrides domestic law	0.5	
Holding > 5% but < 25%	0.5	
Withholding tax of 15% under Malta–Italy Treaty	1	
But incorporated in EU – Parent–Subsidiary Directive may apply	0.5	
Must satisfy definition of a company	0.5	
Form listed <i>[under Annex I, Part]</i>	0.5	
Resident in Malta and Italy respectively	0.5	
Not tax resident outside EU under treaty	1	
Subject to tax listed <i>[in Annex I, Part B]</i>	0.5	
Conditions are satisfied	0.5	
Place of effective management issue identified	0.5	
No treaty with Thailand	1	
10% holding sufficient for parent–subsidiary relationship	1	
Rovelli Ltd/Rovelli Italy Ltd parent and subsidiary	0.5	
Exempt from withholding tax	1	
	<hr/> 10	9
(ii) Refrain from taxing, so long as dividend is not deductible	1	
If deductible, should be taxed	1	
Profit from participating loan taxable in Luxembourg	1	
	<hr/> 1	3
(b) Treaty overrides domestic law	0.5	
Malta–Spain Treaty: withholding tax of 10%	1	
But incorporated in EU – Interest and Royalties Directive may apply	0.5	
Exempt from withholding tax	1	
Must satisfy definition of a company	0.5	
Similar to Parent–Subsidiary Directive	0.5	
May be deemed to be met	0.5	
Must be associated companies	0.5	
Direct minimum holding of 25%	0.5	
Both held directly by common 25% parent	0.5	
Penguin Holding Ltd must hold both companies	1	
Neither condition satisfied (2 x 0.5)	1	
Directive does not apply	0.5	
Interest subject to 10% withholding tax as per Treaty	0.5	
	<hr/> 9	8
		<hr/> 20