
Answers

1 (a)

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Dear Sirs and Madam

Maltese income tax and duty on documents and transfers implications of the share transactions

Following our meeting, we hereunder provide you with our comments on the tax implications of the share transfers (actual and proposed) of the company's shares for all relevant parties.

(i) Donation of shares by Joe Cachia to his children Mario and Isabelle

Income tax implications

A donation is treated as a deemed sale made at the market value of the property at the time of transfer. However, no tax is due where the donation is made by a person to their descendants in the direct line, therefore, the donation by Joe to his children Mario and Isabelle is not taxable.

Duty on documents and transfers implications

A donation is also treated as a transfer for the purposes of the duty on documents and transfers. No tax relief is allowed on the donation of shares to descendants. The donation of the shares in Clockwork Ltd by Joe will be subject to duty on the value of the consideration or the real value of the securities transferred, whichever is the higher. The rate of duty, €2 or €5 for every €100 or part thereof of the chargeable amount, depends on the proportion of the company's assets (excluding current assets other than immovable property) consisting of immovable property. Immovable property assets are clearly not more than 75% of such assets, so duty would be chargeable at the rate of €2 for every €100.

The real value of Clockwork Ltd needs to be computed in the same way as the transfer of a controlling interest is computed for capital gains purposes.

The following points will need to be considered in determining the real value of the shares in Clockwork Ltd:

- 1 The real value will be determined by reference to the net asset value as shown in Clockwork's 2014 financial statements, i.e. the financial statements for the year immediately preceding 2015, the year in which the transfer is to be made.
- 2 Given that the assets of Clockwork Ltd are represented solely by shares in Clockwork Technologies Ltd and Clockwork Services Ltd, and such shares represent more than 10% of the nominal value of the issued share capital of Clockwork Ltd, the real value of the two subsidiaries must be determined. Again, in determining the real value of the subsidiaries, the same rules as apply to a transfer of a controlling interest will apply.
- 3 Since the assets of Clockwork Services Ltd include immovable property, the book value of the property will have to be replaced by its market value as determined by an architect, i.e. €550,000.
- 4 As the sole income of Clockwork Ltd is derived from dividends distributed by its subsidiaries, such dividends will be excluded from the calculation of goodwill for Clockwork Ltd, meaning that Clockwork Ltd's goodwill will be nil. However, the goodwill of its two subsidiaries will need to be determined. The value of this goodwill is equivalent to two years' average profits, by reference to their profits for the five financial years preceding the transfer.
- 5 A deduction is allowed to compensate for the increase in inflation on the factory, as determined by reference to its cost of acquisition and the relevant immovable property indices. Again, this is not applicable to Clockwork Ltd, as it does not directly own any immovable property, but will need to be calculated for Clockwork Services Ltd.
- 6 Furthermore, unlike the determination of the market value for capital gains purposes, in determining the net asset value of the company for duty purposes, any liability in excess of the value of all the assets, excluding the value of the immovable property, is not deductible, except for:
 - bank loans relating to the cost of acquisition of the immovable property or real right thereon; and
 - debts registered at the Public Registry relating to the acquisition of the immovable property, where such debt is registered within three months from the date of acquisition.

Neither of these deductions is applicable in the case of the transfer of shares in Clockwork Ltd, as the loans made by Joe and Clive to assist Clockwork Services Ltd with the purchase of the factory were not registered.

(ii) Transfer of shares in Clockwork Ltd by Mario and Isabelle to Clive Cachia

Income tax implications

A transfer by Mario and Isabelle of the shares in Clockwork Ltd received by donation from their father, Joe, within five years of them receiving the shares will result in Mario and Isabelle being taxed on the gain. The gain will be calculated by taking into account the cost of acquisition of the shares at the time they were originally acquired by Joe. Their cost of acquisition would be €1,000 (10% of €10,000), given that Joe acquired the shares on original subscription.

Given that Mario and Isabelle do not hold more than 25% each of the nominal value of the issued share capital of Clockwork Ltd, the transfer of a 10% holding would generally not qualify as a transfer of a controlling interest. However, where two or more transfers of shares in the same company are made by the same or by related persons within a period of 18 months or less, in order to determine the chargeable gain arising from the last transfer, the transfers should be treated as a global transfer made by the same person on the date of the last transfer.

An individual is deemed to be related to another person if that person is their spouse, their descendant in the direct line, their adoptive child, the spouse of any such descendant or adoptive child, their brother or sister, or a company of which the individual is, directly or indirectly, a shareholder. Therefore, Mario and Isabelle would qualify as related persons. In determining whether their transfer qualifies as a controlling interest, the combined percentage transferred by them should be aggregated. Given that the aggregated amount transferred is 20%, the transfer would not be a transfer of a controlling interest.

Mario and Isabelle will be taxable at their personal tax rates on the difference between the consideration (€1,000,000) and the original cost of acquisition (€1,000), i.e. on €999,000. However, if any transfer of their shares takes place five years after the donation, the cost of acquisition will be deemed to be the value of the shares as declared in the deed of donation of €800,000 for 1,500 shares (15%).

Duty on documents and transfers implications

As in the case of the donation, duty at the rate of €2 for every €100 or part thereof of the amount or value of the consideration or the real value of the shares transferred, whichever is the higher, will be due on each of the transfers.

(iii) Potential transfer of shares by Joe to Clive Cachia

Income tax implications for Joe

If Joe transfers a further 10% of the shares in Clockwork Ltd to his brother Clive within 18 months from the transfer of shares by Mario and Isabelle to Clive, then the transfer would qualify as a transfer of a controlling interest, as, although his current shareholding (20%) is less than 25%, he will have held more than 25% (i.e. 50%) during the 18-month period. Since Mario and Isabelle qualify as related persons to Joe (being his descendants in the direct line), the market value of the shares transferred by Joe will be deemed to be equal to the market value of the global transfer made by all three of them (being a transfer of 30%) determined by reference to the rules relating to the determination of market value with respect to transfers of a controlling interest, but reduced by the total value which was taken into account for determining the chargeable gain arising from the previous transfers by Mario and Isabelle, i.e. reduced by the €2,000,000 which Clive would have paid for those transfers.

Duty on documents and transfers implications for Joe

Again, duty at the rate of €2 for every €100 or part thereof of the amount or value of the consideration or the real value of the securities transferred, whichever is the higher, will be due on the transfer.

Income tax implications for Clockwork Services Ltd

Clockwork Technologies Ltd and Clockwork Services Ltd are a group of companies as they are both resident in Malta and are controlled and beneficially owned directly or indirectly to the extent of more than 50% by the same shareholder (Clockwork Ltd). In 2012, when the factory was sold to Clockwork Services Ltd by Clockwork Technologies Ltd, the individual direct or indirect beneficial owners of the two companies were Joe and Clive, and each of them held substantially the same percentage interest in the nominal share capital and voting rights in the two companies. Therefore, the sale of the factory would have been an intra-group transfer of assets on which no tax will have been payable as the transfer would have been deemed to be a no loss or gain transfer.

If any of the qualifying conditions cease to be satisfied within six years of the intra-group transfer, a de-grouping charge will arise in the acquiring company. The maximum variance in shareholding permitted under the 'substantially the same percentage' condition is 20%. Changes in shareholding due to a donation to a direct descendant are disregarded for this purpose. The transfers of shares by Joe to Mario and Isabelle by donation will not trigger a de-grouping charge but a further transfer of a 10% holding by Joe to Clive will do so, because after this transfer their respective holdings will both change by more than 20% compared to their holdings in 2012 (i.e. from 50% to 10% in the case of Joe and from 50% to 80% in the case of Clive). Consequently a de-grouping charge will arise at the level of Clockwork Services Ltd, which will be subject to tax on the deemed disposal and re-acquisition of the factory at its 2012 architect's valuation of €500,000. As the acquisition date of the factory is deemed to be 1995, the rate of tax payable on the gain will be 10%.

Duty on documents and transfers implications for Clockwork Services Ltd

As an intra-group transfer, the transfer of the factory in 2012 would also have been exempt from duty. There is no 'de-grouping' charge to duty (clawback of the relief) on a subsequent change in shareholdings .

Concluding remarks

The proposed transfers to Clive by Mario and Isabelle, and possibly by Joe, will all have significant tax consequences given the low cost of acquisition of the shares for each of the transferors. In the case of the transfer by Joe, there will also be further tax consequences for Clockwork Services Ltd. From a tax viewpoint, it would be better to delay any transfers until at least January 2019 (i.e. six years from the transfer of the factory to Clockwork Services Ltd) and preferably to after January 2020 (i.e. five years from the donation of shares to Mario and Isabelle).

Yours faithfully

Tax consultant

(b) Appendix to letter – Calculation of tax payable on capital gains on the transfer of shares from Joe to Clive Cachia

Determination of market value of Clockwork Ltd

	€	€	€
Net asset value of Clockwork Ltd			5,400,000
Immovable property adjustment			0
Goodwill adjustment			0
			<u>5,400,000</u>

Market value of Clockwork Technologies Ltd

Net asset value of Clockwork Technologies Ltd		1,500,000	
Goodwill adjustment			
Aggregate profit of the last five years (800,000 + 600,000 + 500,000 + 350,000 + 300,000)	€2,550,000		
Two years average profit (2,550,000/5*2)		<u>1,020,000</u>	
Market value of Clockwork Technologies Ltd		2,520,000	
Less: Book value of Clockwork Technologies Ltd		<u>(9,000)</u>	2,511,000

Market value of Clockwork Services Ltd

Net asset value of Clockwork Services Ltd		750,000	
Goodwill adjustment			
Aggregate profit of the last five years (50,000 + 100,000 + 75,000 + 150,000 + 170,000)	€545,000		
Two years average profit (545,000/5*2)		218,000	
Immovable property adjustment			
Add: Market value of immovable property	550,000		
Deduct: Book value of immovable property	<u>(500,000)</u>		
		<u>50,000</u>	
Market value of Clockwork Services Ltd		1,018,000	
Less: Book value of Clockwork Services Ltd		<u>(20,000)</u>	998,000
Market value of Clockwork Ltd			<u>8,909,000</u>
Market value of 30% of Clockwork Ltd			<u>2,672,700</u>

Market value of €2,672,700 is less than the agreed consideration of €3,000,000.

		€
Consideration		3,000,000
Less: Consideration on previous transactions		(2,000,000)
Inflation deduction on property: (25,000) x (10% x (823.89 – 791.02)/791.02)		(104)
Cost of acquisition (10% x €10,000)		<u>(1,000)</u>
Capital gain		<u>998,896</u>
Income tax at 35%		349,614

2 The Storm Group

Maltese tax treatment of income and dividends

Storm Malta Holding Ltd, Storm Properties Malta Ltd and Storm Malta Ltd are all resident and domiciled in Malta and are therefore taxable in Malta on their worldwide income. The income of the Malta branch is the income of Storm NL Ltd which, although neither resident nor domiciled in Malta, is subject to tax in Malta only on income arising in Malta. Unless either specific provisions or exemptions apply, the income of all three subsidiaries and the branch will be subject to tax in Malta at the standard rate of 35% but with relief for any foreign tax suffered. Rentals BVI Ltd is a company resident but not domiciled in Malta and is therefore taxable on all income arising in Malta and any income arising outside Malta received in Malta.

(i) Storm Malta Holding Ltd

If Storm Malta Holding Ltd acquires Dubai Ltd, it expects to derive dividend income from that company. It is necessary to consider whether Storm Malta Holding Ltd can apply the participation exemption. In order to benefit from the participation exemption, Storm Malta Holding Ltd's holding in Dubai Ltd must satisfy the following conditions:

First, Storm Malta Holding Ltd's holding must qualify as an 'equity holding', i.e. a holding in the share capital of a company which is not a property company, which entitles the holder to any two of the following rights:

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

Storm Malta Holding Ltd's holding will entitle it to derive dividend income, therefore, if it also has any one of the other two rights, the holding will qualify as an equity holding. Dubai Ltd would not qualify as a property company given that the immovable property it owns (the shopping mall) is not situated in Malta.

Second, the equity holding must qualify as a participating holding.

A holding will qualify as a participating holding if it satisfies any one of the following conditions:

- (1) The holding is of at least 10% of the equity shares of the investee company and entitles the investor company to at least 10% of any two of the equity holding rights; or
- (2) The investor company is entitled at its option to call for and acquire the entire balance of the equity shares in the investee company not held by it; or
- (3) The investor company is entitled to first refusal in the event of the proposed disposal, redemption or cancellation of all of the equity shares in the investee company not held by it; or
- (4) The investor company is entitled to either sit on the board or appoint a person to sit on the board of the investee company as a director; or
- (5) The investment represents a total value, as on the date or dates on which it was acquired, of a minimum of €1,164,000 and the holding is held for an uninterrupted period of not less than 183 days; or
- (6) The shares are held for the furtherance of the investor company's own business and are not held as trading stock.

Storm Malta Holding Ltd's anticipated holding in Dubai Ltd is of 9%, it will acquire this holding for €1,000,000, and the holding will not give it any special rights over Dubai Ltd. From the facts provided, it would appear that none of the conditions are satisfied, even though the holding and investment conditions are very nearly satisfied. If there is no participating holding, the participation exemption would not apply.

Where the participation exemption does not apply, the dividends would be allocated to the foreign income account and Storm Malta Holding Ltd would have two options with respect to the taxation of the dividend income:

- To pay tax at 35% on the dividends received from Dubai. Upon a distribution of these dividends to Storm NL Ltd, it may claim a 6/7ths refund of the Malta tax charged, resulting in an effective tax of 5%.
- To apply the flat rate foreign tax credit (FRFTC). In this case, a notional foreign tax credit of 25% would be claimed and the effective tax rate at the level of Storm Malta Holding Ltd would be between 7.47% and 18.75% of the chargeable income, depending on the level of expenses. Upon a distribution of dividends to Storm NL Ltd, it may claim a 2/3rds refund of the Malta tax paid, thereby reducing the effective tax rate suffered in Malta to between 2.49% and 6.25%.

The preferred option would depend on the means of funding the acquisition.

If Storm Malta Holding Ltd funds the acquisition by means of debt, it may claim a deduction of the interest since such interest will be incurred on capital employed in the generation of the income (the dividend). Further, as Storm NL Ltd is a non-resident, the interest will not be subject to tax in Malta, as it will not be connected to Malta Branch (i.e. the permanent establishment of Storm NL Ltd in Malta). Depending on the interest rate payable on the loan, funding the acquisition by means of debt and using the FRFTC option is likely to be preferable.

(ii) Storm Properties Ltd

Storm Properties Ltd appears to be carrying out an activity in the nature of trade. Therefore, its profits will be taxed at 35% and allocated to the Maltese taxed account. However, the company may claim double taxation relief for the tax suffered in Israel, meaning that it would pay tax at 25% on its profits in Malta.

Upon the distribution of dividends to Storm NL Ltd, it may claim a 6/7ths refund of the Malta tax charged, i.e. the tax charged prior to accounting for double taxation relief of 35%. The refund will be limited to the tax actually paid in Malta (i.e. 25%), resulting in an effective tax rate in Malta of 0% on the profits.

(iii) Malta branch

The Malta branch of Storm NL Ltd will constitute a permanent establishment in Malta and its income will be deemed to arise in Malta. The profits will be taxed in Malta at the standard rate of 35% and allocated to the Maltese taxed account (MTA). However, on a distribution of dividends by Storm NL Ltd to Storm Holding UK Ltd, it may claim a 6/7ths refund of the Malta tax charge, thereby reducing the effective Malta tax rate to 5%.

(iv) Rentals BVI Ltd

The rental income derived by Rentals BVI Ltd will not be taxable in Malta as it is not received in Malta. It will be allocated to the untaxed account.

(v) Storm Malta Ltd

Storm Malta Ltd will not be subject to tax in Malta on the dividends it derives from Rentals BVI Ltd as, being a company, Storm Malta Ltd does not qualify as a recipient for the purposes of the 15% tax on distributions from the untaxed account. The distribution from Rentals BVI Ltd will be allocated to the untaxed account of Storm Malta Ltd without being subject to tax. Upon the distribution of dividends to Storm NL Ltd, it will also not be subject to tax in Malta given that the Storm group is not owned by persons who are resident and domiciled in Malta.

3 (a) Malta Table Ltd

Sale of chairs and tables

The sale of chairs and tables by Malta Table Ltd via its agent NL Supplies Ltd to customers in the Caribbean qualifies as a supply of goods. NL Supplies Ltd is acting in the name and on behalf of Malta Table Ltd, therefore, it qualifies as a disclosed agent meaning that the supply is deemed to be made directly by Malta Table Ltd.

The place of supply of goods which are transported is where the transport begins. Given that the goods are sold and shipped to a destination outside the European Community, the sales will qualify as exports so will be treated as exempt with credit for VAT purposes. No VAT will be charged on the sales, but any Maltese VAT which Malta Table Ltd incurs on its costs can be claimed as an input credit according to the rules of deduction.

Commission charged by NL Supplies Ltd

The supply by NL Supplies Ltd to Malta Table Ltd qualifies as a supply of services. In terms of the general place of supply rules, a service is deemed to take place where the customer is established, which in this case is in Malta. However, the specific services provided by NL Supplies Ltd as an agent will be treated as exempt with credit supplies because the transaction on which the commission is due is an export which is exempt with credit.

(b) Malta Sailing Ltd

Charter of Queen of the Sea

The charter of a yacht qualifies as a supply of services. In terms of the general place of supply rule, the place of supply of a service to a non-taxable person is where the supplier's business is established, which in this case is in Malta. However, the hiring of a means of transport is subject to special rules as to place of supply. The charter of Queen of the Sea to Mr Bocconi qualifies as a short-term hiring given that it is for less than 90 days and the place of supply of short-term hiring of a vessel is the place where the vessel is put at the disposal of the customer. Therefore, the place of supply in respect of Queen of the Sea is Monaco.

Charter of Total Eclipse

The charter of Total Eclipse does not qualify as a short-term hiring as it exceeds 90 days. The general supply rule for services will apply to the hiring and, in the case of a non-taxable person, the place of supply of a service is where the supplier has its place of business. Malta Sailing Ltd has a place of business in Malta. If the supply of the charter to Mr Saad is made in Malta (which could be the case as this is where the yacht is actually put at the disposal of the customer), the place of supply with respect to the charter of Total Eclipse is Malta.

(c) Bruce Smith

Consultancy services provided

The general rule with respect to the supply of services depends on whether the customer is a taxable person or not. Where the supply is to a taxable person, the place of supply is where the customer has established their business. Where the supply is to a non-taxable person, the place of supply is where the supplier is established. However, all of Bruce's customers are outside the EU and consultancy services provided to non-taxable persons outside the EU are deemed to take place where the customer is established, has their permanent address or usually resides.

Therefore, all of Bruce's consultancy services with respect to both his business customers and private individuals will be deemed to take place outside Malta. Notwithstanding this, given that Bruce is carrying out an economic activity in Malta, he may register for VAT purposes in Malta, and will be entitled to claim input VAT credits for any costs incurred in Malta.

Personal services received

Bruce has received the services in his capacity as a non-taxable person.

Neither of the services he has received fall within the general place of supply rule.

The transport of his personal goods from the UK to Malta involves the transport of goods where the place of departure and the place of arrival are situated within two different member states, so the transport qualifies as an intra-Community transport of goods. The place of supply of such services to a non-taxable person is the place of departure, i.e. the UK.

With respect to the television satellite services received from Great Sports Ltd, the place of supply is where the customer has their permanent address, which in Bruce's case is Malta. Given that the supply is provided to a non-taxable person (Bruce), the liability to account for VAT on the supply falls on the supplier. Although not established in Malta, Great Sports Ltd will be liable to register for VAT in Malta under the standard VAT registration (Article 10) within 30 days from the date of the supply. Great Sports Ltd must submit VAT returns in Malta and may claim an input credit for any Maltese VAT which it may incur on its costs in Malta according to the rules of deduction.

Regardless of the taxable value of its supplies, Great Sports Ltd will not be eligible to register under Article 11 as a small undertaking since this scheme is only open to businesses established in Malta.

Tutorial note: *Great Sports Ltd may apply for the special scheme for telecommunications, broadcasting and electronic supplies, but this scheme is outside the scope of the published syllabus.*

4 (a) Qualifying activities under the Investment Aid Regulations

The following activities are considered qualifying activities under the Investment Aid Regulations:

- Manufacturing activities
- Information and communications technology development
- Call centre activities
- Research and development and innovation
- Eco-innovation, waste treatment and environmental solutions
- Biotechnology
- Pharmaceuticals
- Facilities for filming audiovisual productions
- Provision of tertiary education
- Provision of private health care services
- Freeport and logistics operations
- Hotels, resort hotels, suite/apartment hotels or guest houses
- Knowledge intensive business services
- Cultural restoration
- Large scale cultural, creative and trade facilities
- Industrial packaging

Note: *EIGHT activities only required*

(b) Global Products Malta Ltd

(i) Status as a small enterprise

The determination of how to account for the acquisitions by Global Products International Ltd depends on whether each of the three companies qualifies as an autonomous enterprise, a partner enterprise or a linked enterprise.

An autonomous enterprise is an enterprise which is classified as neither a partner enterprise nor a linked enterprise.

A partner enterprise is an enterprise which is not a linked enterprise and with which there is a sister company relationship, in which one company holds, either solely or with one or more linked enterprises, 25% or more of the capital or voting rights of the company.

A linked enterprise is a company with which the other company has one of the following relationships:

- One is the parent company of the other, holding a majority of the shareholder voting rights; or
- One of the companies has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of the other; or
- One of the companies has the right to exercise a dominant influence over the other company pursuant to a contractual relationship or in terms of the memorandum and articles of association; or
- The company's parent company controls a majority of the shareholders' voting rights in the other company.

In view of the above definitions:

- CypPharma Ltd, in which Global Products International Ltd will only hold 15%, will qualify as an autonomous enterprise.

- Belux Ltd, in which Global Products International Ltd will hold 30%, will qualify as a partner enterprise.
- MediMalta Ltd, in which Global Products International Ltd will hold 55%, will qualify as a linked enterprise.

In order to determine whether Global Products Malta Ltd would remain a small enterprise for the purposes of the Investment Aid Regulations:

- the data of CypPharma Ltd, an autonomous enterprise, is ignored;
- the data of Belux Ltd, a partner enterprise, is aggregated to the data of Global Products Malta Ltd in proportion to the percentage holding of Global Products International, i.e. 30%; and
- the data of MediMalta Ltd, a linked enterprise, is wholly aggregated with the data of Global Products Malta Ltd, i.e. 100%.

Following the acquisition of the three companies, the data of Global Products Malta Ltd will become:

- Employees: $40 + 3 (30\% \text{ of } 10) + 100 = 143$ employees
- Turnover: $\text{€}5 \text{ million} + \text{€}900,000 (30\% \text{ of } \text{€}3 \text{ million}) + \text{€}10 \text{ million} = \text{€}15,900,000$
- Balance sheet total: $\text{€}9 \text{ million} + \text{€}2,100,000 (30\% \text{ of } \text{€}7 \text{ million}) + \text{€}12 \text{ million} = \text{€}23,100,000$

Global Products Malta Ltd will no longer qualify as a small enterprise but will qualify as a medium enterprise.

(ii) Tax payable for 2015 and investment tax credits (ITCRs) carried forward

Qualifying expenditure	€400,000	
ITCRs at 25% of qualifying expenditure	€100,000	
Profit for the year		€700,000
Tax at 35%		€245,000
		€
ITCRs brought forward		175,000
ITCRs claimed for the year (calculated above)		100,000
Total ITCRs available for the year		275,000
ITCRs utilised for the year		(245,000)
ITCRs carried forward		30,000
Inflation rate		0.17%
Inflated ITCRs carried forward		30,051
Profits allocated to the Maltese taxed account (MTA)		€700,000

5 (a) Pamela King

(i) Employment income

As an individual resident but not domiciled in Malta, who is not married to a person who is ordinarily resident and domiciled in Malta, Pamela King is taxable in Malta on all income or gains arising in Malta, and all income arising outside Malta which is received in Malta.

In terms of the double tax treaty between Malta and China (as per the OECD Model), Pamela is only taxable in Malta on her employment income unless the employment is exercised in China. The employment will be considered to be exercised in China, China may tax so much of the income which is derived therefrom if:

- Pamela is present in China for more than 183 days in any 12-month period;
- the remuneration is paid by, or on behalf of, an employer resident in China; or
- the remuneration is borne by a permanent establishment which the employer has in China.

Pamela's employer, Xiang Ltd, is incorporated in China and she will spend the majority of her time in China, i.e. more than 183 days per year, therefore China will have primary taxing rights over her employment income derived from her activities carried out in China. China is restricted from taxing Pamela on the income derived from her activities carried out in Malta rather than China.

Given that Pamela's salary is all received in a bank account in Malta, her employment income is also taxable in Malta but Malta must grant double taxation relief for the tax paid in China. As Pamela is employed under a contract of employment requiring her to perform her work mainly outside Malta, she may benefit from a 15% flat rate of tax on the income derived from her employment. The 15% rate of tax may also apply to the income derived for any period spent in Malta in connection with the employment outside Malta.

Notwithstanding the application of the lower tax rate, Pamela may still benefit from double taxation relief on her employment income. The relief is only granted up to the amount of tax actually paid in Malta on the income which is taxed twice.

(ii) Sale of Sail Ltd or Sail Pro Ltd

If Sail Pro Ltd transfers its shares in Sail Ltd to a third party, as a company resident in Jersey, Sail Pro Ltd would be exempt from tax in Malta because any gains derived by a non-resident from the transfer of shares in a Maltese company are exempt from tax in Malta, provided:

- Sail Ltd is not a property company; and
- the non-resident company (Sail Pro Ltd) is not owned and controlled, directly or indirectly, nor acts on behalf of an individual (Pamela) who is ordinarily resident and domiciled in Malta.

Both these conditions are satisfied, so the sale will be exempt from tax in Malta. However, should the proceeds of the sale be distributed as dividend income to Pamela's bank account in Malta, she would be taxable in Malta on the dividend income.

If Pamela transfers her shares in Sail Pro Ltd directly, because Sail Pro Ltd is a Jersey company, any gain derived from the sale of its shares would be deemed to be a gain arising outside Malta so would not be taxable in Malta, even if the proceeds were to be received in Malta.

From a Malta tax perspective, the second option would be the preferred option.

(iii) Pension income

In terms of Maltese law, given that the pension is received in a Maltese bank account, it is taxable in Malta.

In terms of the double tax treaty between Malta and Hong Kong (as per the OECD Model), a pension and other similar remuneration paid to a resident of Malta in consideration of past employment is taxable only in Malta. However, where the pension is paid by or out of funds created by an overseas government or public authority to an individual in respect of services rendered to that government or public authority, the pension is only taxable in the overseas country, which in Pamela's case would be Hong Kong.

The exception to this is that the pension would only be taxable in Malta (and not Hong Kong) if the individual were both a resident and national of Malta. As Pamela is not a national of Malta, the exception does not apply and Malta is restricted from taxing the pension income paid to her by the government of Hong Kong.

(b) Paul Mifsud

In order to benefit from the rules relating to returned migrants, Paul must satisfy the following conditions:

- he must have been born in Malta;
- he must have actually resided outside Malta for an aggregate period of 20 years falling within a period of 25 years preceding the first day of the year of assessment in which he returns as resident in Malta; and
- he must have received in Malta at one or more times during the year immediately preceding the year of assessment an amount of income of not less than €14,000 arising outside Malta and chargeable to tax in Malta.

If he qualifies as a returned migrant, Paul will be taxable in Malta on all income and gains arising in Malta, and all income arising outside Malta which is received in Malta but he will not be taxable in Malta on any gains arising outside Malta, even if received in Malta.

With respect to income arising outside Malta which is received in Malta, Paul will benefit from a 0% tax bracket of €4,200, and will be taxable on the rest of his overseas income at the flat rate of 15%. With respect to all income or gains arising in Malta, Paul will be taxable at the standard tax rates, starting at the rate of 15%.

		<i>Available</i>	<i>Maximum</i>
1	(a) (i) Donation of shares by Joe to Mario and Isabelle		
	Income tax		
	Donation is a deemed sale	0.5	
	No tax on donation to direct descendants	0.5	
	Duty		
	Donation is treated as a transfer	0.5	
	Subject to duty	0.5	
	On higher of value of consideration or real value	0.5	
	Rate depends on the proportion of immovable property assets	0.5	
	75% or more limit	0.5	
	This case: €2 for every €100 or part thereof	0.5	
	Computation of real value same as for a transfer of controlling interest	0.5	
	Reference to net asset value per preceding year financial statements, i.e. 2014	1.0	
	Reference to value of shares in Clockwork Technologies Ltd and Clockwork Services Ltd	0.5	
	Shares represent more than 10% of nominal value of Clockwork Ltd	0.5	
	Reference to market value of immovable property	0.5	
	Clockwork Ltd goodwill is nil, with reason	1.0	
	Goodwill of subsidiaries to be determined	0.5	
	Two years' average profits of last five years basis	0.5	
	Deduction for inflation on property to be allowed	0.5	
	Deduction not applicable to Clockwork Ltd but to Clockwork Services Ltd	0.5	
	Non-deductible liabilities	0.5	
	Exceptions: Bank loans	0.5	
	Debts registered at Public Registry	0.5	
	Time limit: three months	0.5	
	Deductions not applicable in this case	0.5	
		<hr/> 12.5	
			10
	(ii) Transfer of shares by Mario and Isabelle to Clive		
	Disposal within five years of donations	0.5	
	Gain will be based on cost of acquisition when acquired by Joe	1.0	
	No transfer of controlling interest	0.5	
	Transfer by related persons within an 18-month period	0.5	
	Transfer would be treated as a global transfer	0.5	
	Definition of related person and application in this case	1.0	
	Percentage must be aggregated	0.5	
	Aggregated still amounts to less than 25%	0.5	
	Taxable at personal tax rates on gain	0.5	
	If transferred after five years: cost of acquisition is as per deed of donation	0.5	
	Duty payable at €2 for every €100 or part thereof	0.5	
		<hr/> 6.5	
			5

	<i>Available</i>	<i>Maximum</i>
(iii) Potential transfer of shares by Joe to Clive		
Joe personally		
Joe's transfer is a transfer of a controlling interest, with reasons	1.0	
Mario and Isabelle are related persons	0.5	
Market value based on global transfer of 30%	1.0	
Reduced by total value of chargeable gain from previous transfers	0.5	
Duty payable at €2 for every €100 or part thereof	0.5	
Clockwork Services Ltd		
Clockwork Technologies Ltd and Clockwork Services Ltd are a group of companies, with reasons	1.0	
Same individual direct or indirect beneficial owners	0.5	
Substantially the same percentage interest	0.5	
2012 sale of factory is an intra-group transfer	0.5	
No loss or gain treatment	0.5	
Within a six-year period	0.5	
De-grouping charge	0.5	
Variance of over 20%	0.5	
Donations to direct descendants disregarded	0.5	
Will arise on transfer of further 10% to Clive	0.5	
Deemed disposal and re-acquisition at 2012 value	0.5	
Tax rate of 10%	1.0	
Duty position	1.0	
Concluding remarks/advice re deferral	1.0	
	<u>12.5</u>	10
(b) Net asset value of Clockwork Ltd with no adjustments	0.5	
Net asset value of Clockwork Technologies Ltd	0.5	
Goodwill adjustment of Clockwork Technologies Ltd	0.5	
Net asset value of Clockwork Services Ltd	0.5	
Goodwill adjustment of Clockwork Services Ltd	0.5	
Immovable property adjustment of Clockwork Services Ltd	0.5	
Deduction of book value of Clockwork Technologies Ltd and Clockwork Services Ltd	0.5	
Market value of 30% of Clockwork Ltd	0.5	
MV less than consideration so use consideration	0.5	
Deduct consideration of previous transactions	0.5	
Inflation deduction	0.5	
Cost of acquisition	0.5	
Income tax	0.5	
	<u>6.5</u>	6
Format and presentation of the letter	2.0	
Clarity and effectiveness of communication	<u>2.0</u>	<u>4</u>
		<u>35</u>

	<i>Available</i>	<i>Maximum</i>
2 Taxation of resident and domiciled companies	0.5	
Taxation of Malta branch	0.5	
Tax status and taxation of Rentals BVI Ltd	1.0	
(i) Storm Malta Holding Ltd		
Must qualify as equity holding	0.5	
Conditions for equity holding	1.0	
Likely to qualify as an equity holding	0.5	
Dubai Ltd is not a property company	0.5	
Participating holding	0.5	
More than 10% holding	0.5	
Option to buy entire balance of shares	0.5	
Right of first refusal	0.5	
Right to appoint directors	0.5	
Investment of at least €1,164,000 for 183 days	0.5	
Furtherance of own business	0.5	
Conditions not satisfied	0.5	
Foreign income account	0.5	
Pay tax at 35%	0.5	
Effective tax rate after 6/7ths refund	0.5	
FRFTC	0.5	
Effective tax rate prior tax refund	0.5	
Effective tax rate after 2/3rds refund	0.5	
Preferred option dependent on means of funding	0.5	
Interest deductible, with reason	1.0	
Interest not taxable in Storm NL Ltd, with reason	1.0	
Use of debt funding and FRFTC likely to be preferable	0.5	
(ii) Storm Properties Ltd		
Activity is in the nature of trade	0.5	
Maltese taxed account	0.5	
Double tax relief available	0.5	
Effective tax rate prior to refund	0.5	
6/7ths refund available	0.5	
Definition of tax charge	0.5	
Limited to Malta tax actually paid	0.5	
Effective tax rate of 0%	0.5	
(iii) Malta branch		
Permanent establishment: income arises in Malta	1.0	
Allocated to Maltese taxed account	0.5	
6/7ths refund available	0.5	
Effective tax rate 5%	0.5	
(iv) Rentals BVI Ltd		
Not taxable as not received in Malta	1.0	
Allocated to the untaxed account	0.5	
(v) Storm Malta Ltd		
No tax on dividends as not a recipient	1.0	
Allocated to the untaxed account	1.0	
No tax on dividends paid	0.5	

	<i>Available</i>	<i>Maximum</i>
3 (a) Sale of chairs and tables		
Supply of goods	0.5	
Disclosed agent	1.0	
Place of supply: where transport begins	0.5	
Export	0.5	
Exempt with credit supply	1.0	
No output VAT, can claim for input VAT	0.5	
Commission		
Supply of services	0.5	
Place of supply under general rule: where customer is established	0.5	
Linked to export: exempt with credit supply	1.0	6
	<hr/>	
(b) Charter of Queen of the Sea		
Supply of services	0.5	
Place of supply under general rule: where supplier is established	0.5	
Short-term hiring, with reason	1.0	
Place of supply: where put at the disposal of the customer	1.0	
Place of supply: Monaco	0.5	
Charter of Total Eclipse		
Not a short-term hiring	0.5	
Place of supply for non-taxable person: where supplier is established	1.0	
Place of supply: Malta	0.5	
Unless supplied from another fixed place of business of Malta Sailing Ltd	0.5	6
	<hr/>	
(c) Consultancy services		
Place of supply under general rule for taxable person: where customer is established	0.5	
Place of supply under general rule for non-taxable person: where supplier is established	0.5	
Consultancy services to non-taxable person outside EU: where customer is established	1.0	
Place of supply for all customers: outside Malta	0.5	
May still register for VAT in Malta, with reason	1.0	
Can claim input VAT credits for Malta costs	0.5	
Personal services received		
Services do not fall within the general place of supply rule	0.5	
Intra-community transport	0.5	
Place of supply: place of departure, i.e. UK	0.5	
Satellite services: place of supply: where customer has permanent residence, i.e. Malta	1.0	
Liability to account for VAT is that of supplier	0.5	
Must register under Article 10	0.5	
Within 30 days	0.5	
Can claim input VAT credits for Malta costs	0.5	
Cannot register under Article 11, with reason	1.0	
	<hr/>	
	9.5	8
		<hr/>
		20

	<i>Available</i>	<i>Maximum</i>
4 (a) Eight qualifying activities 0.5 marks each – maximum		4
(b) (i) Determination depends on qualification of acquired companies	1.0	
Definition of an autonomous enterprise	1.0	
Definition of a partner enterprise	1.0	
Definition of a linked enterprise:		
– Parent company	0.5	
– Right to appoint/remove members of bodies	0.5	
– Right to exercise dominant influence	0.5	
– Parent controls majority of shareholders' voting rights	0.5	
CypPharma Ltd: autonomous enterprise	0.5	
Belux Ltd: partner enterprise	0.5	
MediMalta Ltd: linked enterprise	0.5	
Ignore CypPharma Ltd	1.0	
Belux Ltd: % of holding	1.0	
MediMalta Ltd: wholly aggregated	1.0	
Calculations: 3 x 0.5 marks	1.5	
Global Products Malta Ltd will become a medium enterprise	1.0	
	<hr/>	12
(ii) ITCRs for 2015	1.0	
Tax at 35%	0.5	
ITCRs available	0.5	
ITCRs utilised	0.5	
ITCRs carried forward	0.5	
Inflated ITCRs carried forward	0.5	
Allocated to the Maltese taxed account	0.5	
	<hr/>	4
		<hr/> 20 <hr/>

	<i>Available</i>	<i>Maximum</i>
5 (a) (i) Employment income		
Not married to a person ordinarily resident and domiciled in Malta	0.5	
Basis of tax as a resident non-dom	0.5	
General rule: employment income taxable only in Malta	0.5	
Exception: if employment is exercised in China	0.5	
183 day condition	0.5	
Paid by China resident employer	0.5	
Borne by PE in China	0.5	
Employment is exercised in China	0.5	
China has primary taxing rights re employment income derived from China	1.0	
China is restricted from taxing her non-China source income	1.0	
Salary also taxable in Malta as received into Maltese bank account	0.5	
Must apply double tax relief	0.5	
Contract of employment: mainly work outside Malta	0.5	
15% flat rate applies	1.0	
Also to income for work in Malta in connection with work carried on outside Malta	1.0	
Can still benefit from double tax relief	0.5	
(ii) Sale of Sail Ltd or Sail Pro Ltd		
Sale of shares by Sail Pro Ltd exempt from tax in Malta	0.5	
Sail Ltd not a property company	0.5	
Sail Pro Ltd not owned and controlled by a person ordinarily resident and domiciled in Malta	0.5	
Pamela taxable if she receives dividend in Malta	0.5	
Transfer of shares in Sail Pro Ltd not taxable, with reason	1.0	
Second option is best	0.5	
(iii) Pension income		
Taxable in Malta as received in Malta	0.5	
Also taxable in Malta under general tax treaty rule for pensions	0.5	
Specific position under tax treaty re pensions from government service	1.0	
Exception: if Pamela is a resident and national of Malta	0.5	
Pamela not a national of Malta: Malta restricted from taxing pension	0.5	
	<u>16.5</u>	15
(b) Born in Malta	0.5	
Non-resident for 20 years in 25-year period	1.0	
Must receive €14,000 per annum	1.0	
Taxation of returned migrants – income received in Malta, gains arising in Malta	1.0	
Non-taxation of returned migrants – gains arising outside Malta	1.0	
Tax on income arising outside Malta at 0%/15%	1.0	
Tax on income arising in Malta at progressive rates	0.5	
	<u>6</u>	<u>5</u>
		<u>20</u>