
Answers

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Tax Consult Limited
24, Archbishop Street
Valletta

The Directors
Health Limited
Valley Road,
Birkirkara

1 September 2016

Dear Sirs

Malta income tax and stamp duty implications of the transfer of the factory

Following our meeting, we hereunder provide you with our comments on the tax implications of the options under consideration for the transfer of the factory.

1. Direct transfer of the factory to Lifestyle Limited

Income tax

The transfer of the factory to Lifestyle Limited would be subject to tax at the flat rate of 8% of the transfer value. The transfer value is defined as the higher of the market value of the property and the consideration paid for the transfer. The market value is determined by means of an architect's valuation which, based on the information supplied, is currently equal to the proposed consideration.

The brokerage fees payable to Josette Grech will be deductible against the transfer value provided:

1. Health Limited provides the notary with a signed receipt showing the date of the payment, the name, a legally valid identification document number and address of the broker and the amount of brokerage fees paid;
2. the notary records in the deed of the transfer the fees paid and the name and particulars of the broker; and
3. the notary produces a certified copy of the said receipt to the Commissioner, together with the notice of the transfer.

The tax payable on this transfer would be €232,800 ((3,000,000 – 90,000) x 8%). The profits will be allocated to the final taxed account (FTA) and there will be no further tax on the distribution of the said profits.

Duty on documents and transfers

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

2. Intra-group transfer of the factory, followed by a transfer of the factory to Lifestyle Limited

Intra-group transfer from Health Limited to Fitness Limited

Income tax

The transfer of the factory from Health Limited to Fitness Limited will be deemed to result in no loss or gain and so will not give rise to any tax implications in Malta. This is because the factory will be transferred between two companies which are controlled and beneficially owned directly or indirectly to the extent of more than 50% by the same shareholders.

In addition, as the asset being transferred is immovable property, the individual direct or indirect beneficial owners of the two companies must be the same, and each individual must hold substantially the same percentage interest in the nominal share capital and voting rights of both companies. For this purpose:

1. Where an individual holds less than 20% of the nominal share capital and voting rights of the company, they do not need to be taken into account in determining whether the beneficial owners are the same. Therefore, Josette Grech may be ignored in determining whether the two companies are owned by the same beneficial owners.
2. In determining whether the individual beneficial owners hold substantially the same percentage interest, the law provides that where the difference between the percentage interest in each company does not exceed 20%, such differences can be ignored. The difference in George Stivala's, Miriam Camilleri's and Karm Tanti's holding in both companies is just 5%, meaning that the second stricter test applicable to immovable property is also satisfied.

Duty on documents and transfers

The Duty on Documents and Transfers Act contains an exemption from duty with the same conditions as the relief from income tax. Therefore, no duty on documents is payable on the intra-group transfer of the factory.

Subsequent transfer of the factory from Fitness Limited to Lifestyle Limited

Income tax

In this case, Josette Grech is the only shareholder in common to the two companies, owning 15% of Fitness Limited and 30% of Lifestyle Limited. Therefore, the conditions for a no loss or gain transfer of the factory are not satisfied.

So, as in the first alternative, the transfer of the factory to Lifestyle Limited will be subject to tax at the flat rate of 8% of the transfer value. However, there would not be any deductible expense for the brokerage fees, so the tax payable on this transfer would be €240,000 (3,000,000 x 8%).

The reduced rate of 5% applicable where a property is transferred within five years from its date of acquisition is not available. The factory was acquired by Fitness Limited under a transfer which benefited from intra-group tax relief, so it is deemed to have been acquired on the date on which the property was last acquired by a company which did not qualify for intra-group tax relief, i.e. Health Limited. As this was in 2009, the five-year period has elapsed.

Duty on documents and transfers

As for the first alternative, duty of €5 for every €100 or part thereof will be due on the transfer value of the factory, i.e. €150,000.

3. Intra-group transfer of the factory, followed by the transfer of the shares in Fitness Limited to Lifestyle Limited

Intra-group transfer from Health Limited to Fitness Limited

The income tax and duty implications on the intra-group transfer from Health Limited to Fitness Limited are the same as in the first step of the second alternative, i.e. no tax or duty is payable, for the same reasons as those explained above.

Transfer of shares in Fitness Limited to Lifestyle Limited

Income tax

Any gain derived by the shareholders from the transfer of shares in Fitness Limited to Lifestyle Limited is taxable in Malta. Provisional tax at the rate of 7% of the higher of the consideration and the market value will be payable at the time of the transfer.

George Stivala's holding represents more than 25% of the nominal value of the issued share capital of Fitness Limited, so the transfer of his 45% holding will qualify as a transfer of a controlling interest. Therefore, the transfer value of the shares will be the higher of the consideration and the market value of the shares.

The market value is determined by reference to the net asset value as shown in Fitness Limited's 2015 financial statements, i.e. the financial statements for the year immediately preceding 2016, the year in which the transfer is to be made.

Therefore, the market value of the shares in Fitness Limited to be transferred by George Stivala will be determined as follows:

- 1 Since the assets of Fitness Limited include the factory, the book value of the factory will be replaced by its market value as determined by an architect.
- 2 The value of goodwill must be added to the net asset value of Fitness Limited, which is equivalent to two years' average profits calculated for the five financial years immediately preceding the year in which the transfer is made. Given that the company has been in existence since January 2012, which is four years prior to the year in which the transfer is to be made, the calculation will take into account two years' average profits calculated for these four years.
- 3 A deduction is allowed to cater for the increase in inflation on the factory, determined by reference to the cost of acquisition and the relative immovable property indices. In this case, the index for the year of acquisition should be that immediately preceding that of the original date of acquisition.

The cost of acquisition of the shares will be the amount George originally subscribed for the shares.

The income tax to be paid by George Stivala on the sale of his shares in Fitness Limited to Lifestyle Limited, assuming that his marginal rate of tax is 35%, is £267,750. (Workings at Appendix A.)

The transfers of shares by Miriam Camilleri, Karm Tanti and Josette Grech will not be treated as a transfer of a controlling interest, so the gain will simply be calculated based on their transfer value less their cost of acquisition. None of the shareholders are related, so the 18-month period for determining the existence of a controlling interest does not apply.

The transfer will also give rise to a de-grouping charge because Fitness Limited will have acquired the factory from Health Limited in terms of an intra-group transfer which was not chargeable to tax and, by virtue of the transfer of shares, Fitness Limited will no longer form part of the original group (given that the only shareholders of Lifestyle Limited are Josette Grech and Noel Delia) before six years have elapsed. Fitness Limited will therefore be treated as having sold and re-acquired the factory immediately after its intra-group acquisition, and will therefore be subject to a final tax of 8% on the market value of the property at the time of acquisition (i.e. €3 million).

Duty on documents and transfers

The transfer of marketable securities is subject to 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.

However, where the company whose marketable securities are being transferred is classed as a property company, duty is charged at the rate of €5 for every €100 or part thereof. A property company is defined as a company having 75% or more of its assets (excluding current assets other than immovable property) consisting of immovable property. It would need to be determined whether Fitness Limited would be a property company following the transfer of the factory, however, the likelihood is that the factory will account for 75% of its assets.

The real value of Fitness Limited will be computed in the same way as for the rules relating to the calculation of market value in the case of the transfer of a controlling interest for capital gains purposes. However, in determining the net asset value 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 factory; and
- debts registered at the Public Registry relating to the acquisition of the factory, where such debt is registered within three months from the date of acquisition.

Given that the debt for the acquisition of the factory remains outstanding, it is safe to assume that these deductions would not apply.

Should you require any further information or advice in this matter do not hesitate to contact us.

Yours faithfully,

Tax Consult Limited

Appendix to letter

Calculation of tax on capital gain payable by Mr George Stivala

	€	€
Net asset value of Fitness Limited – December 2015		1,000,000
Immovable property adjustment		
<i>Add:</i> Market value of immovable property	3,000,000	
<i>Deduct:</i> Book value of immovable property	(2,000,000)	<u>1,000,000</u>
Goodwill adjustment		
Aggregate profit of the last four years: €400,000 (€400,000 + 250,000 + 350,000 + 200,000)		
Two years' average profit (400,000/4*2)		<u>200,000</u>
Market value of Fitness Limited		<u>2,200,000</u>
Market value of €2,200,000 is higher than agreed consideration for the shares of €1,000,000		
Market value of 45% holding		990,000
Inflation deduction: 45% x (500,000 x ((832.95 – 743.05)/743.05))		(27,222)
Cost of acquisition (45% x €500,000)		<u>(225,000)</u>
Capital gain		<u>737,778</u>
Income tax at 35%		258,222

2 (a) Property Management Malta Limited group

As companies incorporated and tax resident in Malta, Property Management Malta Ltd (PMM) and Global Marketing Malta Ltd (GMM) are taxable in Malta on their worldwide income. On the other hand, Valletta Property BVI Ltd (VPB) and Tuscan Property Italy Ltd (TPI) are taxable in Malta only on their Malta source income.

Valletta Property BVI Ltd

The rental of immovable property situated in Malta is deemed to be income arising in Malta in terms of the *situs* principle, meaning that the rental of the three offices is taxable in Malta. At the option of the taxpayer, the gross rental income derived from the rental of a tenement is taxable in Malta at the flat rate of 15%. A tenement is deemed to include residential property as well as a commercial tenement [as defined in article 1525 of the Civil Code], which includes offices.

The flat rate of 15% does not apply to the rental of commercial tenements where the property is rented to a related body of persons, i.e. when the lessor and lessee are owned or controlled, directly or indirectly, as to more than 25% by the same person. VPB and GMM have a common shareholder (PMM), but PMM only has a 23% holding in VPB, and not more than 25%. Therefore, VPB may benefit from the 15% flat rate on the gross rental income derived from all three offices. The tax of 15% is final and no set-off or refund is available in respect of the tax. The tax payable would be €45,000 ((€100,000 x 3) x 15% = €45,000).

Should VPB opt to have its income taxed at the 15% flat rate, its distributable profits will be allocated to the final tax account (FTA).

However, given that 15% flat rate tax is optional, VPB may decide not to be subject to tax at 15% on its gross rental income but to be taxed at 35% and claim a deduction for allowable expenses, i.e. interest incurred in relation to capital employed in acquiring the income; any rent, ground rent or similar burden payable on the property; and a further amount of 20% of the income remaining after deducting the rent, ground rent or similar burden. The tax burden would therefore be calculated as follows:

Income (€100,000 x 3)	€300,000
Less: rent, ground rent or similar burden	—
	<hr/> €300,000
Less: 20%	(€60,000)
Less: interest	—
	<hr/> €240,000
Tax at 35%	€84,000

In this case, the profits after tax at 35% will be allocated to the immovable property account (IPA).

The preferable option would therefore be the flat rate of 15%.

Global Marketing Malta Ltd

GMM is taxable at the standard rate of 35% on all its profits, and its taxed profits will be allocated to the Maltese taxed account (MTA). Although it rents its offices from VPB, no secondary allocation needs to be made from its MTA to its IPA because:

- (i) GMM and VPB are not related persons in terms of the Tax Accounts Rules, in that PMM does not hold more than 25% of VPB; and
- (ii) the offices are rented for €100,000 a year for 200 square metres, which is significantly more than the €250 per square metre which would require a secondary allocation ($100,000/200 = €500/\text{square metre}$).

Property Management Malta Ltd

Dividends derived from VPB

If VPB opts to be taxed at the 15% flat rate, any dividends distributed to PMM will not be subject to further tax in Malta. The dividends received will be allocated to PMM's FTA and no tax refunds will be available.

If VPB does not take up the 15% flat rate tax option, any dividends distributed to PMM would not benefit from the participation exemption as VPB is a property company, as it owns immovable property situated in Malta which is not used for the purpose of carrying on its business. Therefore, any dividends received by PMM from VPB would be taxed at 35%, subject to double tax relief in terms of the underlying tax credit, and would be allocated to the IPA as they relate to profits which are directly or indirectly derived from immovable property situated in Malta. No tax refund would be available.

Dividends derived from TPI

The tax implications of dividends derived from TPI will depend on whether the holding satisfies the conditions of the participation exemption.

In order for the participation exemption to apply, PMM's holding must first qualify as an equity holding, i.e. a holding of share capital in a company which is not a property company, which entitles PMM to at least two of the following equity holding rights:

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

A property company is defined as a company which owns immovable property situated in Malta. TPI does not qualify as a property company given that it only owns immovable property outside Malta.

Assuming PMM's holding entitles it to at least two of the equity holding rights, it is reasonable to assume that its holding in TPI will qualify as an equity holding.

Second, it has to be established whether PMM's holding also qualifies as a participating holding.

PMM currently holds less than 10% of TPI, however, it has a call option which entitles it to acquire the entire balance of shares not held by it, so its holding in TPI will qualify as a participating holding.

Therefore, as TPI is incorporated in an EU country (Italy) all the conditions necessary for the participation exemption apply, and any dividends derived from TPI by PMM will be exempt from tax in Malta. Such dividends will be allocated to the FTA.

Dividends derived from GMM

Dividends derived from GMM will not be subject to further tax in Malta in terms of the imputation system. Such dividends will be allocated to the MTA. Furthermore, PMM will be entitled to a 6/7ths tax refund of the Malta tax charge of GMM. This tax refund will be allocated to the untaxed account (UTA).

(b) Property Management Lux Ltd (PML)

As a company not resident in Malta, PML is taxable in Malta on income or gains arising in Malta at the standard rate of 35%.

The exemption from tax applicable to gains or profits accruing to or derived from a transfer of shares in a Malta company by a non-resident will not apply because PMM is a property company.

A property company is a company which owns immovable property situated in Malta or any real rights thereon, or a company which holds, directly or indirectly, shares or other interests in any entity or person, which owns immovable property situated in Malta or any real rights thereon where 5% or more of the total value of the shares or other interests so held is attributable to the immovable property. VPB's principal asset is the immovable property it owns in Malta, so more than 5% of the total value of VPB's shares will relate to that immovable property, which is not used solely for the purpose of carrying on VPB's trade or business. Therefore VPB qualifies as a property company and as a result of its shareholding in VPB so does PMM.

3 (a) Wind Insurance Ltd (WIL)

(i) Value added tax (VAT) implications

Services offered

Insurance services are generally exempt without credit for VAT purposes, meaning that no VAT is charged but no input tax can be claimed.

Place of supply of services

The general rule with respect to the place of supply of services is that the place of supply to a non-taxable person is the place where the supplier has established their business.

However, the place of supply of insurance transactions to non-taxable persons who have their permanent address or usually reside outside the EU is where that person has their permanent address or usually resides.

This implies that, while 40% of WIL's insurance services will be deemed to take place in Malta, i.e. where WIL is established, 60% of its insurance services will be deemed to take place outside Malta.

Registration requirements

WIL is a taxable person which is established in Malta. If WIL were to provide only exempt without credit supplies, it would not be entitled to register for VAT [under Article 10]. While insurance services are generally exempt without credit, an exception applies to supplies made by persons licensed under the Insurance Business Act with respect to services provided to customers established outside the EU. For such services provided to persons outside the EU, WIL will be entitled to claim credit for input tax as per its partial attribution formula – meaning it can claim an input tax credit on 60% of the supplies it receives. Such entitlement to claim input tax credits allows it to register for VAT [under Article 10 of the VAT Act], in which case WIL would need to submit VAT returns in Malta.

(ii) Gloria Kind

Should Gloria take up employment with WIL, she may qualify as an insurance expatriate on the basis that WIL is a company authorised under the Insurance Business Act, and provided:

- (i) she is not ordinarily resident and domiciled in Malta; or
- (ii) she was not resident in Malta for a minimum period of three years immediately preceding the year in which she starts her employment with WIL, and during the three years she was employed on a full-time basis in a similar position outside Malta.

An insurance expatriate may opt not to be liable to tax on income relating to the following expenditure incurred by their employer for their benefit, for a period of up to ten years:

1. Removal costs in respect of relocation to or from Malta;
2. Accommodation expenses incurred in Malta;
3. Travel costs in respect of visits by them and their immediate family to or from Malta;
4. Provision of a car for their use in Malta;
5. A grant (subvention) of not more than €600 per calendar month;
6. Medical expenses and medical insurance;
7. Any school fees in respect of their children.

As Gloria is likely to qualify as an insurance expatriate, her employment contract with WIL could be amended to provide for some or all of the fringe benefits listed above, so as to make her overall salary package more competitive. Based on the information at hand, should WIL pay her accommodation of €1,000 a month (€12,000 a year), as well as provide her with a €600/month subvention (€7,200), she would be subject to tax in Malta on €25,800 (€45,000 – €12,000 – €7,200), which would result in a tax charge of €3,725.

(b) Clive Borg

Clive is involved in the provision of two different supplies to the Russian customer. First, the wood carving, which qualifies as a contract of works and is therefore treated as a supply of services, second the restoration of the antique chest acquired from Italy by the customer, which is also a supply of services.

The place of supply of the contract of works, a service to a non-taxable person, is where the supplier is established, therefore, the place of supply of the wood carving is Malta.

The place of supply of the services relating to the restoration of the chest is also Malta as the VAT Act specifically provides that the place of supply of work carried out on movable property is where the work is carried out. The law also provides that the supply of services consisting of work carried out on goods which were acquired for the purpose of undergoing work within Malta and which will be transported outside the EU following the completion of the works are an exempt with credit supply. However, it cannot be said that the chest was acquired with the purpose of undergoing work in Malta, therefore this exemption will not apply to the restoration work undertaken on the chest.

In the case of both supplies, VAT will be chargeable at the standard rate of 18% and credit can be claimed for any input tax incurred.

4 Giggle Limited (GL)

Stock options

The granting of a share option to an employee is not deemed to be a fringe benefit for tax purposes. The benefit arises when the employee exercises the option.

The value of the benefit is deemed to be 42.85% of the excess over the option price (if any) of the price the shares would fetch if sold at the market price on the date the option is exercised.

Any gain realised by an employee from assigning or renouncing the share option in favour of another person will constitute a taxable capital gain.

A gain realised from later transferring shares acquired through the exercise of a share option will also constitute a gain. However, when calculating the gain, the cost of acquisition of the shares will be deemed to be the market value of the shares at the date of exercise of the option.

Interest free loans

The granting of a loan to an employee on beneficial terms is deemed to be a taxable fringe benefit. An interest free loan is deemed to be granted at beneficial terms, and the annual value is the difference between the benchmark rate of interest (which has been determined by the Commissioner for Revenue to be 8%) and the interest rate charged (0% in GL's case).

Subsidised meals

The provision of subsidised/discounted meals is deemed to be a taxable fringe benefit. However, where the discounted meals are provided by an employer in a canteen where meals are served to all staff, as is Giggle Limited's plan, there would be no fringe benefit.

Mini-van transport service

The cost of providing organised transport to and from an employee's place of work is not deemed to be a taxable fringe benefit.

Cash car allowance

A car allowance paid for the use of an employee's own car is a fringe benefit.

However, where:

- the car cash allowance is in terms of an employee's contract of service;
- the employee is not in a controlling position, i.e. not a director or other officer of the company; and
- the employee is not entitled to the private use of another car owned or held under a title of lease by the employer;

the value of the benefit is reduced by 50%, subject to a maximum total reduction of €1,170 in a calendar year.

From the car allowance of €4,000 to be paid by GL, each employee can claim a deduction of €1,170 and the remaining €2,830 will be treated as a fringe benefit.

Free use of fitness centre

The availability of a fitness centre at the offices of GL should not be deemed to be a taxable fringe benefit for employees as it would qualify as a recreational facility for the benefit of the employees and such facilities are specifically excluded from the application of the fringe benefit rules.

Long-term service awards

Awards for long service are an exempt fringe benefit provided they are:

- made in recognition of 15 years or more of service;
- the award does not exceed €120 per year of service; and
- no similar award has been granted to the employee within the previous 15-year period.

GL's proposal to pay €15,000 to staff on the tenth anniversary of their employment does not satisfy any of these conditions and so the entire amount will be a taxable fringe benefit.

Furtherance of education

Provided the costs in respect of the furtherance of an employee's studies qualify as business related training, the cost would qualify as an exempt fringe benefit. Business related training includes training courses which lead to the acquisition of knowledge or skills

which are necessary for the performance of the employee's duties under the relative employment. The costs which are deemed to be exempt fringe benefits include costs in relation to:

- the course and examination fees;
- the cost of essential books and course material;
- if the course is held outside Malta, the cost of a journey to the destination and back, including related insurance, the costs of transport, accommodation and meals incurred by a person outside Malta, and a reasonable subsistence allowance of approximately €140 *per diem*.

5 (a) Lara Becker

The acquisition of foreign marketable securities by a person resident in Malta may be subject to a duty of €2 for every €100 or part thereof, of the amount or value of the consideration or the real value, whichever is the higher.

Acquisition of 15% in Gusta Limited

A document is subject to duty either from its origin if it is executed in Malta, or by reason of its use if it is executed outside Malta. Documents executed outside Malta, which would be chargeable to duty if executed in Malta, are chargeable to duty in Malta when use is made of the transfer document in Malta. Documents are deemed to be used in Malta if they are produced before a court, arbitrator or referee as evidence, or are produced before any person or authority in Malta for their enforcement or registration.

Given that the transfer of the shares in Gusta Limited is executed in Spain then, unless use is made of the transfer document in Malta, there will be no duty on documents on this transfer.

Acquisition of 10% in Birgu Hotels Limited (BHL)

BHL qualifies as a property company in that it owns immovable property situated in Malta. This is the case even though BHL is not resident in Malta. The acquisition of the BHL shares is therefore subject to duty, whether executed in Malta or outside Malta. Given that BHL's only asset is the hotel in Birgu, it can be concluded that 75% or more of its assets, excluding all current assets other than immovable property, consist of immovable property. Therefore, the duty chargeable on the share transfer will be at the higher rate of €5 for every €100 or part thereof of the higher of the consideration or their real value.

Acquisition of 10% shareholding in Birgu Management Limited (BML)

Duty is chargeable on a transfer of foreign marketable securities held in a company having, directly or indirectly, more than 50% of its business interests in Malta, made to or by any individual who is ordinarily resident and domiciled in Malta, or by any other person who is owned or controlled, directly or indirectly, or acts on behalf of an individual who is ordinarily resident and domiciled in Malta.

However, given that the transferor and transferee in this case are not individuals resident and domiciled in Malta, and the transfer was executed outside Malta, then the acquisition of the shares in BML will not be subject to duty in Malta, unless use is made of the transfer document in Malta.

(b) (i) Taxation of Med Transport Limited (MTL)

Current operations

In terms of Malta's tax treaties with Cyprus and Lebanon, any profits derived from the operation of ships in international traffic is only taxable in the place of effective management of the operator, MTL, which is Malta. International traffic means any transport by a ship operated by an enterprise which has its place of effective management in Malta, except when the ship is operated solely between places outside Malta, e.g. in Cyprus or Lebanon.

Transfer of ferry

In terms of Malta's tax treaties with Cyprus and Lebanon, any gain derived from the alienation of ships operated in international traffic is only taxable in the State in which the effective management of the transferor, MTL, is situated.

Therefore, neither Cyprus nor Lebanon will have any taxing rights under the respective double tax treaties over the profits from MTL's current operations or any gains arising on the sale of the ferry to Zeppos Limited.

(ii) Taxation of Thomas Zerafa

As an individual resident and domiciled in Malta, Thomas is taxable in Malta on a worldwide basis. Given that he is also deemed to be tax resident in Cyprus, the tie-breaker rule in the tax treaty between Malta and Cyprus must be applied.

The treaty provides [Article 4(2)] that, where an individual is deemed to be resident in both countries, his tax residence is determined as follows:

- He is deemed to be resident in the country in which he has a permanent home. Thomas owns a house in Malta and lives in rented accommodation in Cyprus; it is, however, difficult to determine which one is his permanent home.
- Where he has a permanent home in both countries or no permanent home, he will be deemed to be resident in the country in which his personal and economic relations are closer (centre of vital interests). While he spends

three weeks out of every four in Cyprus, Thomas' family lives in Malta. The Commentaries to the OECD Model treaty state that, in determining a person's centre of vital interests, more weight should be given to personal ties, i.e. where his family lives. Therefore, given that his family are in Malta, Thomas will be deemed to be resident in Malta for the purposes of the double tax treaty.

The normal rules relating to the taxation of employment income under the treaty do not apply where employment is exercised aboard a ship operated in international traffic. In such cases, the treaty provides that Thomas may be taxed in the place of effective management of his employer, MTL, which is Malta.

While Thomas is employed under a contract of employment requiring him to work mainly outside Malta, he cannot benefit in Malta from the reduced 15% tax rate for an overseas employment as the law provides for a carve out where the employment is exercised on board a ship owned by a Maltese company.

If, following a sale of the ferry boat to Zeppos Limited, Thomas becomes an employee of that company, then his tax position would change as follows:

- even though Thomas would remain tax resident in Malta, Cyprus would have the right to tax his employment income in terms of the treaty, as this is the place of effective management of Zeppos Limited;
- Thomas may benefit in Malta from the flat 15% tax rate on his employment income, given that his employer will no longer be a Maltese company;
- Malta must grant double tax relief for any tax paid by Thomas in Cyprus.

	<i>Available</i>	<i>Maximum</i>
1 (a) Direct transfer of factory to Lifestyle Limited		
Income tax		
Taxable at 8% of transfer value	1	
Definition of transfer value	0.5	
Determining market value	0.5	
Deduction of brokerage fees	0.5	
Conditions	2	
Tax payable	0.5	
Profits allocated to FTA	0.5	
No further tax on distribution	0.5	
Duty		
5% rate on transfer value	0.5	
Intra-group transfer of factory followed by transfer to Lifestyle Limited		
Income tax		
No loss or gain transaction	1	
Controlled to the extent of >50%	0.5	
Individual direct or indirect beneficial owners are the same	0.5	
Substantially the same percentage interest	0.5	
Ignore less than 20% holdings	1	
Josette Grech can be ignored	0.5	
Differences of up to 20% can be ignored	1	
Tests satisfied	0.5	
Duty		
Similar group relief conditions	0.5	
No duty payable	0.5	
Subsequent transfer to Lifestyle Limited		
Income tax		
Josette Grech only common shareholder	0.5	
Group relief conditions not satisfied	0.5	
Transfer is taxable at 8%	0.5	
No deduction of brokerage fees	0.5	
Tax payable	0.5	
Reduced rate of 5% does not apply	0.5	
Deemed acquisition date that of Health Limited	0.5	
Five-year period elapsed	0.5	
Duty		
As in alternative 1	0.5	
Intra-group transfer of factory, followed by transfer of shares in Fitness Limited		
Intra-group transfer tax and duty implications as for alternative 2	0.5	
Transfer of shares		
Income tax		
Transfer of shares is taxable	0.5	
Provisional tax at 7%	0.5	
George Stivala:		
Transfer of controlling interest >25%	1	
Higher of market value and transfer price	0.5	
Determination of NAV based on 2015 financial statements	0.5	
Replace book value of factory with market value	0.5	
Determining goodwill	0.5	
Means to calculate goodwill	0.5	
Deduction for inflation	0.5	
Same year so zero	0.5	
Cost of acquisition	0.5	
Transfer of Miriam, Karm and Josette not a transfer of a controlling interest	0.5	
18-month period does not apply as not related	0.5	
De-grouping charge	0.5	
No longer part of original group	0.5	
Within six years	0.5	
Sold and immediately re-acquired	0.5	
Final tax of 8%	0.5	

	<i>Available</i>	<i>Maximum</i>
Duty		
General rule 2%	0.5	
Property company so 5% rate	0.5	
75% or more assets test	0.5	
Real value determined as per capital gains rules	0.5	
Allowable deductions (2 x 0.5)	1	
No deductions likely to apply	0.5	
	<u>31</u>	26
(b) Net asset value	0.5	
Immovable property adjustment	0.5	
Goodwill adjustment	0.5	
Market value of Fitness Limited	0.5	
Market value is higher than consideration	0.5	
Market value of 45%	0.5	
Inflation deduction	0.5	
Cost of acquisition	0.5	
Capital gain	0.5	
Tax payable	<u>0.5</u>	5
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 (a) Resident companies taxable on worldwide income	0.5	
Non-resident companies: Malta source income only	0.5	
Valletta Property BVI Ltd		
Source of income is Malta	0.5	
Option to tax at 15% flat rate	0.5	
Tenement includes commercial property	0.5	
15% does not apply to rental to related parties	0.5	
Definition of related: >25%	0.5	
Common shareholder but only 25%	0.5	
15% final tax, no set off or refund	0.5	
Calculation	1	
Allocated to FTA	0.5	
May choose not to benefit from 15% rate/be taxed at 35%	0.5	
Claim deduction of expenses	0.5	
Interest incurred	0.5	
Any rent, ground rent and similar burden	0.5	
Deduction of further 20%	0.5	
Calculation	1.5	
Allocated to the IPA	0.5	
Global Marketing Malta Ltd		
Taxable at 35%	0.5	
Allocated to MTA	0.5	
No secondary allocation to IPA	0.5	
Not related, with reason	1	
Property rented for more than €250/square metre	0.5	
Calculation of how much property is rented for	0.5	
Property Management Malta Ltd		
Dividends from Valletta Property BVI Ltd		
If 15% route: dividends not subject to further tax	0.5	
Allocated to FTA, no tax refund available	0.5	
If not 15% route: no participation exemption	0.5	
Property company	0.5	
Owens property in Malta not used for carrying on business	0.5	
Dividends subject to tax at 35%	0.5	
Benefit from underlying double tax relief	0.5	
Allocated to IPA	0.5	
No tax refund available	0.5	
Dividends from Tuscan Property Italy Ltd		
Must have an equity holding	0.5	
Equity holding rights (3 x 0.5)	1.5	
Not a property company	0.5	
Has an equity holding	0.5	
Participating holding	0.5	
Less than 10% holding currently	0.5	
But option to buy entire balance of shares	0.5	
Incorporated in EU	0.5	
Exemption applies	0.5	
Allocated to FTA	0.5	
Dividends from Global Marketing Malta Ltd		
Imputation system	0.5	
Allocated to MTA	0.5	
6/7ths refund	0.5	
Refund allocated to UTA	0.5	
	<u>26.5</u>	22
(b) Taxable only on Malta source income	0.5	
Taxable at 35%	0.5	
Exemption on transfer of shares in a Malta company by a non-resident not applicable	1	
Definition of property company	1	
Valletta Property BVI Ltd is a property company	0.5	
Property Management Malta Ltd is also a property company	0.5	
	<u>4</u>	<u>3</u>
		<u>25</u>

	<i>Available</i>	<i>Maximum</i>
3 (a) (i) Exempt without credit	0.5	
Meaning of exempt without credit	1	
General rule for place of supply of services	0.5	
Place of supply of insurance to a non-taxable person outside EU	1	
40% is deemed to arise in Malta	0.5	
60% is deemed to arise outside Malta	0.5	
Not entitled to register for VAT if exempt without credit	0.5	
Exception	1	
Entitled to claim input VAT on non-EU services	1	
Must register for VAT	0.5	
Must submit VAT returns	0.5	
	<hr/> 7.5	7
(ii) Take up employment with company registered under Insurance Business Act	0.5	
Not ordinarily resident and domiciled	0.5	
Not present in Malta for three years prior to taking up employment	0.5	
Employed in similar position outside Malta for last three years	0.5	
Insurance expat – exemption on certain fringe benefits	0.5	
For ten years	0.5	
Exempt benefits available (7 x 0.5)	3.5	
Amend salary package/contract of employment	0.5	
Calculation of tax due	2	
	<hr/> 9	7
(b) Wood carving: contract of works	0.5	
Supply of services	0.5	
Restoration: supply of services	0.5	
Place of supply of contract of works: where supplier established	0.5	
Malta	0.5	
Place of supply of works on movable property where the works carried out	0.5	
Malta	0.5	
Rules in relation to exempt export	1	
Does not apply	0.5	
VATable at 18%	0.5	
Input credit available	0.5	
	<hr/> 6	6
		<hr/> 20

	<i>Available</i>	<i>Maximum</i>
4 Stock options		
Granting of stock options not a fringe benefit	0.5	
Benefit arises when employee exercises the option	0.5	
Determining value of the benefit	1.5	
Gain from assigning or renouncing an option is taxable	0.5	
Gain on subsequent transfer of shares is taxable	0.5	
Acquisition cost	0.5	
Interest free loans		
Taxable fringe benefit	0.5	
Loan granted on beneficial terms	0.5	
Value of benefit	1	
Subsidised meals		
Taxable fringe benefit	0.5	
Unless provided in a canteen to all staff	1	
Mini-van transport service		
Not a taxable fringe benefit	0.5	
Provided/organised to/from place of work	0.5	
Car cash allowance		
Taxable fringe benefit	0.5	
Conditions for special provision (3 x 0.5)	1.5	
Value of benefit reduced to 50%	0.5	
Subject to cap of €1,170	0.5	
Calculation of €2,830 taxable amount	0.5	
Use of fitness centre		
Not a taxable fringe benefit	0.5	
Recreational facility for the benefit of employees specifically excluded	0.5	
Long-term service award		
Can be an exempt fringe benefit	0.5	
Conditions for exemption (3 x 0.5)	1.5	
Proposal does not satisfy conditions – amount fully taxable	1	
Furtherance of education		
Business related training: exempt fringe benefit	0.5	
Explanation of business related	1	
Course and examination fees	0.5	
Books and course materials	0.5	
If outside Malta: cost to destination and back	0.5	
Related insurance	0.5	
Transport	0.5	
Accommodation and meals	0.5	
Subsistence allowance of €140	1	
	<u>21.5</u>	<u>20</u>

	<i>Available</i>	<i>Maximum</i>
5 (a) Acquisition of foreign marketable securities is dutiable	0.5	
Duty rate 2% on higher of consideration and real value	0.5	
Acquisition of 15% in Gusta Limited		
Dutiable if executed in Malta	0.5	
Or by reason of use if executed outside Malta	0.5	
Definition of use	1	
No use is made in Malta – so no duty	0.5	
Acquisition of 10% in Birgu Hotels Limited		
BHL is a property company	0.5	
Still property company even if not resident in Malta	0.5	
Whether executed in Malta or not	0.5	
75% or more of assets immovable property	0.5	
Applicable rate is 5%	0.5	
Acquisition of 10% in Birgu Management Limited		
50% of business interests in Malta	1	
Made to or by any individual who is resident and domiciled in Malta	1	
Transferor and transferee are not individuals resident and domiciled in Malta	0.5	
Transfer executed outside Malta	0.5	
No use of document in Malta	0.5	
No duty applies	0.5	
	<hr/> 10	9
(b) (i) Current operations: taxable in place of effective management of operator	1	
Definition of international traffic	0.5	
Transfer of ferry: taxable in place of effective management of transferor	1	
Conclusion: Cyprus/Lebanon have no taxing rights under treaties	0.5	3
(ii) Taxable on a worldwide basis under domestic law	0.5	
Tie-breaker rules under treaty	1	
Permanent home	0.5	
Available in both states	0.5	
Centre of vital interest	0.5	
More focus on family ties	0.5	
Conclusion: resident in Malta	0.5	
Special rules apply to international shipping	0.5	
Place of effective management of ship owner/employer, i.e. Malta	1	
Cannot avail of 15% rate	0.5	
Employment is exercised on board a ship owned by a Maltese company	1	
If employed by Zeppos Limited:		
Cyprus will have right to tax employment income, with reason	1	
May benefit from 15% rate, as employer/owner now a Cyprus company	1	
Malta must grant double taxation relief	0.5	
	<hr/> 9.5	8
		<hr/> 20