
Answers

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Tax consultant
Address
Malta

Mr Brian Deita
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10 June 2019

Dear Mr Deita

Following our discussions, we hereunder provide you with our comments on the applicable treatment of the interest paid to Malta Ltd and dividend paid to North Ltd in terms of the relevant EU Directives and an analysis of the Maltese notional interest deduction (NID) rules and the application thereof to your circumstances.

(i) Treatment of interest paid by South Ltd to Malta Ltd

In terms of its domestic legislation, Southland will impose withholding tax at the rate of 15% on the interest payments made by South Ltd to Malta Ltd. However, notwithstanding its own tax rules, Southland is bound to abide by any restrictions agreed upon in its tax treaties. Since Southland and Malta are signatories to a tax treaty based on the OECD Model Convention, Southland will be prohibited from imposing withholding tax at a rate higher than 10% on the gross interest being paid, since the beneficial owner of the interest, Malta Ltd, is resident in Malta.

Moreover, given that both South Ltd and Malta Ltd are incorporated in European Union (EU) jurisdictions, they are entitled to benefit from the provisions of the EU Interest and Royalty Directive (IRD), which provides that interest payments will be free of any withholding tax if the conditions of the IRD are satisfied. In order to apply the IRD, Malta Ltd and South Ltd must:

- (a) Satisfy the definition of a company in their respective EU Member States and as defined in the IRD; and
- (b) Be associated companies, that is, either one company holds 25% or more of the capital of the other (condition not satisfied) or both companies are directly held as to at least 25% by the same (third) company, which is also incorporated in the EU (condition satisfied).

Therefore, Southland will be prohibited from imposing any withholding tax on the interest paid by South Ltd to Malta Ltd.

(ii) Dividends paid by Malta Ltd to North Ltd

Since Malta Ltd and North Ltd are both incorporated in EU jurisdictions, Malta and Northland are required to apply the provisions of the EU Parent–Subsidiary Directive (PSD) with respect to any dividend distribution. In accordance with the provisions of the PSD:

- the dividends distributed by Malta Ltd should be free of any withholding tax (but note that in any case Malta does not impose any withholding tax on dividend payments to non-residents); and
- Northland will be required to exempt from tax the dividends received by North Ltd or grant an underlying tax credit for any tax paid in Malta.

In order to apply the PSD, Malta Ltd and North Ltd must:

- (a) Satisfy the definition of a company in the PSD, and North Ltd must hold at least 10% of Malta Ltd's capital (condition satisfied).
- (b) Be tax resident in their respective EU Member States and not be tax resident in a country which is not a member of the EU in terms of any tax treaty concluded by Malta and Northland.
- (c) Be subject to a tax which is listed in the Annex of the PSD, without the possibility of an option of being exempt or subject to any other tax which may be substituted for any of these taxes.

Therefore, it appears, *prima facie*, that all the above conditions are met and consequently that North Ltd will be exempt from any tax on the dividends paid to it by Malta Ltd.

However, the PSD contains an anti-abuse provision, which provides that the EU Member State of the parent company is required to tax the dividend income to the extent that such dividend arises out of profits which are deductible by the subsidiary. If Malta Ltd utilises the provisions of the notional interest deduction (NID) rules and takes a deduction for the notional interest, this will result in a deductible expense in Malta Ltd's tax computation. In this case, upon a distribution of such profits made up of a deductible expense, Northland will not be required to exempt the dividend paid by Malta Ltd from tax and is not restricted from imposing tax at the rate of 10% on the dividends received by North Ltd.

(iii) Summary of the main provisions of the NID rules

The NID rules provide for a deduction from chargeable income of a notional interest on risk capital, subject to limitations. For this purpose, risk capital includes the share or partnership capital of a company or partnership, any share premium account, positive retained earnings, loans or other debt borrowed by the undertaking which do not bear interest (typically including shareholders loans), and any other reserves resulting from a contribution to the company or partnership.

Risk capital excludes any capital directly employed in the form of securities, interest in a partnership, contributions and any other loans or debts which do not bear interest which the undertaking holds in or provides to any other person whether resident in Malta or otherwise.

The substantive provisions of the rules provide that in computing the chargeable income of a company or partnership, such undertaking may opt to take a deduction for interest on its risk capital, at a rate established by reference to the current yield to maturity on Malta Government stocks with a remaining term of 20 years plus a premium of 5%. Such deduction is capped at a maximum of 90% of the chargeable income of the undertaking with the excess being carried forward to be deducted in subsequent years. The deduction is claimed through the tax return and requires that on an annual basis, all shareholders or owners of the undertaking approve the claiming of such a deduction.

Whenever a company takes the optional NID, it is required to allocate to the final tax account (FTA) 100% of the deduction availed of, plus a further 10%, up to a maximum of the profits allocated to the Maltese taxed account (MTA) and the foreign income account (FIA). Any excess is ignored.

(iv) The effective annual tax payable in Malta

If Malta Ltd claims the NID, then the effective annual tax payable in Malta will be as follows:

- no claim for double tax relief, €35,000;
- flat rate foreign tax credit (FRFTC) claimed with optimisation, €6,260; and
- FRFTC claimed without optimisation, €9,019.

Therefore, the most tax efficient option would be FRFTC with optimisation.

Detailed calculations are given in the appendix to this letter.

We hope that this answers your immediate queries with respect to the arrangements between the three companies subsequent to 1 January 2019.

If you have any other queries please do not hesitate to contact us.

Yours sincerely

Tax consultant

APPENDIX 1 – The effective annual Malta tax payable if NID is claimed

Option	No claim for double tax relief (5/7ths refund) €	FRFTC with optimisation (2/3rds refund) €	FRFTC without optimisation (2/3rds refund) €
Interest income	800,000	800,000	800,000
FRFTC (€100,000 x 42.349%)	0	42,349	200,000
	800,000	842,349	1,000,000
NID ((5% + 2%) x €10 million)	(700,000)	(700,000)	(700,000)
Chargeable income	100,000	142,349	300,000
Tax at 35%	35,000	49,822	105,000
Less: FRFTC (limited to 85% of the tax charge)	0	(42,349)	(89,250)
Malta tax due	35,000	7,473	15,750
FTA allocation (100% NID)	700,000	700,000	700,000
FIA allocation before NID reallocation	65,000	92,527	195,000
FTA allocation (additional 10% of NID)	65,000	70,000	70,000
Ultimate tax allocations			
FTA	765,000	770,000	770,000
FIA	0	22,527	125,000
Tax refund (assuming 100% dividend) (see working)	0	1,213	6,731
Effective Malta tax payable	35,000	6,260	9,019

Working: Tax refunds due

Formula: $2/3 \times \text{Malta tax paid} \times \frac{\text{Final FIA allocation}}{\text{Initial FIA allocation}}$

With optimisation: $2/3 \times 7,473 \times \frac{22,527}{92,527} = 1,213$

Without optimisation: $2/3 \times 15,750 \times \frac{125,000}{195,000} = 6,731$

2 Peter Grass and Jane Trunk

(a) Income tax and duty on documents implications arising on the proposed sale of shares in English School Limited (ESL)

Income tax implications

The Income Tax Act provides for an exemption from tax on capital gains derived by non-residents on the disposal of shares in a Maltese company, where the company is not a property company. ESL's shareholders are both non-residents, however, the exemption will not be available because ESL owns immovable property situated in Malta (the school), and although the property is used in the course of ESL's business, it is not a factory, showroom, office or warehouse. Moreover, the value attributable to this immovable property situated in Malta exceeds 50% of the total value of ESL's assets.

The sales of shares by Peter Grass (PG) and Jane Trunk (JT) are both considered to be transfers of a controlling interest since both shareholdings represent more than 25% of the nominal issued share capital (and voting rights and rights to profits) of ESL. Therefore, the transfer value of the shares is deemed to be the higher of the consideration received and the market value of the shares.

ESL's market value is calculated by adjusting the net asset value as shown in ESL's financial statements for the year immediately preceding the transfer (2018) as follows:

1. The book value of the school in the financial statements must be replaced with its market value, as determined by an architect's valuation.
2. Adding the value of goodwill, equivalent to two years' average profits of ESL, calculated by reference to its profits for the five financial years preceding the transfer.
3. Since ESL holds at least 10% of the issued share capital in Italian School Limited (ISL), the book value of ESL's investment in ISL must be replaced with its market value.

Tutorial note: *The capital gains rules also provide for an additional adjustment for the book value of any preference shares but this is not applicable in the case of ESL.*

The market value attributable to the shares being transferred is established through a formula which assigns such market value based 40% on the percentage of the nominal share capital, a further 40% on the rights to profits being transferred, and the remaining 20% based on the rights to votes. Therefore, although PG and JT will transfer the same number of shares, the percentage of ESL's market value attributed to each transfer will differ because of the different voting rights applicable to the A and B shares (see part (b) below).

In addition to the deduction for the cost of acquisition of the shares, a further deduction, referred to as an inflation allowance, is permitted for the inflation on the value of the school determined by reference to the cost of acquisition index.

The resulting capital gain is taxable at 35%.

Duty on documents implications

No exemptions from duty will apply because ESL Ltd owns immovable property in Malta (the school) and therefore is considered to be a property company.

A transfer of marketable securities is subject to duty on the amount or value of the consideration received or the real value of the property, whichever is the higher. Where 75% or more of the assets of the company (excluding current assets other than immovable property), whose marketable securities are being transferred, consists of immovable property, duty is charged at the rate of €5 for every €100 or part thereof. Therefore, in the case of ESL, this duty rate will be charged at the rate of €5 for every €100 because its immovable property, valued at €2,000,000, accounts for more than 75% of its total non-current assets of €2,400,000 (€2,000,000 + €400,000 (other non-current assets)).

ESL's real value for duty purposes is computed by adding to the market value established for capital gains purposes, the value of any disallowed liabilities, where the disallowed liabilities are equal to:

- total liabilities, but excluding:
 - (i) bank loans relating to the cost of acquisition of the immovable property; and
 - (ii) any debt registered at the Public Registry (within three months from the immovable property purchase) relating to the acquisition cost of the immovable property

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- All assets excluding the immovable property.

As PG and JT did not register a hypothec or privilege for their shareholder loans, the outstanding amount of €550,000 will not be excluded for the purposes of this calculation.

(b) Income tax on capital gains and duty on documents

	€	€
Income tax on capital gains		
ESL – Net asset value		500,000
Immovable property adjustment		
<i>Add:</i> Market value of immovable property	2,000,000	
<i>Less:</i> Book value of immovable property	<u>(1,000,000)</u>	1,000,000
Goodwill adjustment		
Average two years' profits for the last five years (200,000 + 210,000 + 290,000 + 350,000 + 450,000) x 2/5		600,000
10% investment adjustment		
<i>Add:</i> Market value of investment (80% x 100,000)	80,000	
<i>Less:</i> Book value of investment	<u>(200,000)</u>	<u>(120,000)</u>
Market value of the company		<u>1,980,000</u>
Market value attributable to Peter Grass		
(nominal share capital x 40%) + (voting rights x 20%) + (profit rights x 40%) (50% x 40%) + (2/3 x 20%) + (50% x 40%)	53.33%	
Market value of shares transferred by Peter Grass	1,056,000	
Consideration (€20 x 50,000)	1,000,000	
Higher thereof		1,056,000
Cost of acquisition (50,000 x €1)	50,000	
Inflation deduction % transferred x property cost x (inflation index Yd – inflation index Ya)/inflation index Ya 53.33% x €1,000,000 x (859.63 – 791.02/791.02)	<u>46,256</u>	<u>96,256</u>
Capital gain		<u>959,744</u>
Tax at 35%		335,910
Market value attributable to Jane Trunk		
(nominal share capital x 40%) + (voting rights x 20%) + (profit rights x 40%) (50% x 40%) + (1/3 x 20%) + (50% x 40%)	46.67%	
Market value of shares transferred by Jane Trunk	924,000	
Consideration (€20 x 50,000)	1,000,000	
Higher thereof		1,000,000
Cost of acquisition (50,000 x €1)	50,000	
Inflation deduction % transferred x property cost x (inflation index Yd – inflation index Ya)/inflation index Ya 46.67% x €1,000,000 x (859.63 – 791.02/791.02)	<u>40,480</u>	<u>90,480</u>
Capital gain		<u>909,520</u>
Tax at 35%		318,332
Duty on documents		
	€	€
Market value of the company for capital gains purposes (as above)		1,980,000
Total liabilities	1,000,000	
<i>Less:</i> Bank loans/loans with Public Registry hypothec	<u>(100,000)</u>	
	900,000	
Total assets	1,500,000	
<i>Less:</i> Book value of immovable property	<u>(1,000,000)</u>	
Disallowed liabilities		<u>400,000</u>
Real value of the company		<u>2,380,000</u>
Consideration payable		2,000,000
Higher of consideration and real value		2,380,000
Duty at €5 per €100 or part thereof		119,000

3 (a) Sarah Vella

(i) Value added tax (VAT) registration in Malta

The provision of legal services is considered to be an economic activity for Maltese VAT purposes when carried out for consideration. As a taxable person, Sarah would be required to obtain a VAT registration within 30 days from when the supply is carried out. However, since, initially, Sarah's turnover from her economic activity is not expected to exceed the entry threshold for small undertakings of €20,000 per annum, she will have the option to register for VAT either in terms of Article 10 or Article 11 of the VAT Act.

A VAT registration in terms of Article 10 would require Sarah to charge VAT (at 18%) on all the supplies she makes, but would entitle Sarah to claim a credit for any input VAT incurred, unless such input VAT is blocked.

An Article 11 VAT registration would mean that Sarah would not charge any VAT on her supplies, but she would not be able to claim any credit for any VAT incurred.

(ii) Switch of registration

A taxable person registered for VAT purposes under Article 11 can switch to an Article 10 VAT registration at any point in time, by informing the VAT Department accordingly. A taxable person registered under Article 11 is obliged to cancel their Article 11 VAT registration and apply for an Article 10 VAT registration within 30 days from the date when the small undertaking annual turnover threshold of €20,000 is exceeded. In the case of Sarah, this is expected to occur during her third year of operation.

However, a taxable person registered for VAT purposes under Article 10 is precluded from switching to an Article 11 VAT registration within the first 36 months from when they register for VAT in terms of Article 10. Moreover, in order to switch to an Article 11 VAT registration, the annual turnover cannot exceed the exit turnover threshold of €17,000.

(iii) VAT consequences of acquiring furniture from the French supplier (FF)

The purchase of furniture from FF, a French VAT registered person, is a supply of goods with transport and therefore is considered to be an intra-Community acquisition (ICA) in Malta.

If Sarah opts for a small undertaking VAT registration under Article 11 and the value of her ICAs during the year exceed the prescribed threshold of €10,000, she will be required to register for VAT in Malta in terms of Article 12 and pay VAT on the ICA. Accordingly, Sarah would be required to pay Maltese VAT at 18% on the taxable value of the furniture. However, in such a case, and upon the supply of Sarah's VAT number to FF, the sale of the furniture would not be subject to French VAT, because it would be treated as an exempt intra-Community supply in France.

Sarah would be able to cancel her Article 12 VAT registration only after the expiration of the calendar year following that in which she was so registered and if the value of her ICAs does not exceed the ICA threshold in both the year in which she applies for the cancellation and in the preceding calendar year. As long as her Article 12 VAT registration is maintained, Sarah will be required to pay Maltese VAT on any other ICA and on any other receipt of service deemed to take place where the customer as a taxable person is established.

If Sarah is registered for VAT under Article 11, even if her ICAs do not exceed the prescribed threshold of €10,000, she will still have the option to register under Article 12. However, it would only make sense to do so if the French VAT rate on the furniture sale exceeds the Maltese VAT rate applicable to the ICA of 18%. On the other hand, if Sarah is registered for VAT purposes under Article 10, when she makes the ICA of the furniture she will be required to self-assess VAT on the ICA in Malta, but would then qualify for an input tax credit in connection with the ICA equal to such self-assessed VAT, resulting in a VAT neutral position overall.

(b) High Street Limited (HSL)

(i) VAT treatment of rental fees

In general, leases of immovable property are exempt without credit for Maltese VAT purposes. However, this exemption is subject to a number of exceptions, one of which applies in the case of leases of immovable properties by a limited liability company to a taxable person registered for VAT purposes in terms of Article 10 of the VAT Act, for the purpose of the economic activity of that other person. Therefore, the outlet and space rental fees charged by HSL will be subject to VAT at the standard rate of 18%.

(ii) VAT treatment of multi-purpose vouchers (MPVs)

For VAT purposes, a MPV is a voucher which can be exchanged for goods or services provided by different taxable persons. Although the taxable person cashing in the voucher can be identified, it is not possible to establish the VAT due on the goods or services which will be purchased with the voucher at the time the voucher is issued.

The actual handing over of the goods or the actual provision of the services by the outlets, in return for a MPV accepted as consideration by them, is subject to VAT. However, each preceding transfer of a MPV, including the sale by HSL, is outside the scope of VAT.

The taxable amount of the supply of goods or services paid by means of a MPV is equal to the consideration paid for the voucher less the amount of VAT relating to the goods or services supplied.

4 (a) Almond Holdings Ltd (AH)

(i) Applicability of the participation exemption to dividends received by AH

AH, as a company incorporated, managed and controlled in Malta, is taxable in Malta on its worldwide income. However, upon a distribution of profits by Almond Manufacturing Ltd (AM) and Almond Financing Ltd (AF), AH may be able to benefit from the participation exemption subject to AH's holding in AM and AF meeting the participating holding definition.

By definition, a participating holding is required to initially satisfy the definition of an equity shareholding, that is, AH's shareholding must grant at least two out of the following three rights: a right to profits, a right to vote and a right to assets on a winding up. It appears that AH's shareholdings in AF and AM will satisfy this definition.

In addition, AH's shareholdings in AF and AM must meet at least one of the following conditions:

- it entitles AH to at least 5% of any two of the equity holding rights; or
- the investment's cost of acquisition amounts to at least €1.164 million and has been held for an uninterrupted period of 183 days; or
- it grants AH the right to appoint a director on AF's and AM's board of directors; or
- it grants AH the right to acquire the balance of other shareholders' shares; or
- it is held to further AH's business and not held as a trading stock.

AH's shareholdings in AF and AM will both be deemed to be participating holdings because:

- AH holds more than 5% of AM's share capital; and
- AH's investment in AF was acquired for more than €1.164 million and as at the date of the dividend payment has been held for more than 183 days.

In order for dividend income to qualify for the participation exemption, the entity in which the participating holding is held must also satisfy one of the following anti-abuse conditions:

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

Neither AF nor AM are situated in the EU or pay corporate tax at the rate of at least 15%. However, AH's investments in AF and AM do meet the other anti-abuse condition since in neither case is more than 50% of their income derived from passive interest or royalties. In the case of AM, all of its income is derived from trading activities. Although AF's income is exclusively derived from passive interest, for Maltese tax purposes such interest does not fall within the definition of passive interest and royalties since the interest is subject to a foreign tax of at least 5%. Therefore, AH should be able to claim the participation exemption on the dividends paid to it by both AF and AM.

(ii) Applicability of the participation exemption to the share of profit received by AH

The Income Tax Act provides that the participation exemption is available on income arising from a participating holding, which by definition is deemed to be an equity shareholding. However, a holding by a company in a partnership in Malta or outside Malta, which is treated as a transparent entity and is not a property partnership as defined, is considered to be a participating holding if it satisfies any one of the six conditions referred to in the participating holding definition. Therefore, since AH holds more than 5% of the partnership capital in South America Almond (SAA), the holding would be considered to be a participating holding. However, since the income derived by AH is a share of profits, the anti-abuse conditions must also be satisfied. This does not appear to be the case, since SAA is incorporated outside the EU, is not subject to a foreign tax of at least 15% and derives all of its income from passive royalties which are taxed at a rate of less than 5%. Therefore, the participation exemption will not be available in the case of the share of profits paid to AH by SAA.

(b) Maria – Liability to tax in Malta on foreign source employment income

Prior to her departure to Germany on 1 January 2019, Maria was considered to be both resident and domiciled in Malta. Although she will spend less than 183 days in Malta in 2019, her absence is of a temporary nature and she will retain her personal connections in Malta throughout her stay in Germany. Therefore, for Maltese tax purposes, Maria will remain ordinarily resident and domiciled in Malta and taxable on a worldwide basis.

Although Germany will not claim that Maria is resident therein, it does intend to tax Maria's employment income on a source basis. In terms of the employment income article in the tax treaty, Germany has the right to tax Maria's employment income arising from the activities physically carried out by her in Germany if any of the following conditions are satisfied:

- (i) Maria is present in Germany for a period or periods exceeding in total 183 days in any 12-month period commencing or ending in the tax year.
- (ii) Maria's salary is paid by or on behalf of an employer who resides in Germany.
- (iii) Maria's salary is borne by a permanent establishment which her employer has in Germany.

Since the first two conditions are satisfied, Germany is entitled to tax Maria's employment income on a source basis.

Malta, as the residence state, may also tax Maria's salary provided it grants double tax relief for any tax paid in Germany. However, Maria is employed in terms of a contract with Magic GmbH which requires her to carry out her functions mainly outside Malta, and she is neither employed by the Government of Malta nor on board a vessel, aircraft or land vehicle, owned, leased or chartered by a Maltese company. Therefore, Maria will be entitled to benefit from the 15% flat rate tax on both her German salary and the associated free accommodation fringe benefit.

Consequently, the further tax due in Malta by Maria will amount to €1,900, calculated as follows:

	€
Salary	90,000
Accommodation fringe benefit (€3,000 x 12)	36,000
Total	<u>126,000</u>
Tax at 15%	18,900
Credit for foreign tax	<u>(17,000)</u>
Tax due in Malta	<u>1,900</u>

	<i>Available</i>	<i>Maximum</i>
1 (i) Tax treatment of interest paid by South Ltd		
Southland bound to abide by any restrictions agreed in its tax treaties	1.0	
Maximum withholding tax rate imposed by treaty is 10% on gross interest	0.5	
EU Interest and Royalty Directive – interest payments are free of any withholding tax	1.0	
Conditions to be satisfied:		
– Within the definition of a company in their respective EU Member States	0.5	
– One company holds 25% or more of the capital of the other or both are directly held as to at least 25% by the same (third) company, also incorporated in the EU	1.0	
Conclusion: Southland is prohibited from imposing withholding tax on the interest paid to Malta Ltd	0.5	
	<u>4.5</u>	4
(ii) Tax treatment of dividend paid by Malta Ltd		
Both companies incorporated in EU jurisdictions, so both countries required to apply the provisions of the EU Parent–Subsidiary Directive (PSD)	1.0	
Dividends distributed by the Maltese company should be free of withholding tax	1.0	
In any case, Malta does not impose withholding tax on dividend payments to non-residents	0.5	
Northland required to exempt from tax the dividends received by North Ltd	0.5	
Conditions to be satisfied:		
– Both satisfy the definition of a company in the PSD	0.5	
– North Ltd holds at least 10% of Malta Ltd's share capital	0.5	
– Tax resident in their respective EU Member States and not tax resident in a country which is not a member of the EU	1.0	
– Be subject to a tax which is listed in the Annex of the PSD, without the possibility of an option or of being exempt	1.0	
Anti-abuse provision – the EU Member State of the parent company will tax the dividend income to the extent that such dividend arises out of profits that are deductible by the subsidiary	2.0	
Conclusion: If Malta Ltd utilises the notional interest deduction (NID) rules and treats the NID as a deductible expense, Northland will not be required to exempt from tax the final tax account (FTA) dividend paid by Malta Ltd and is not restricted from imposing the 10% tax on the dividend received by North Ltd	2.0	
	<u>10.0</u>	8
(iii) Notional interest deduction (NID) rules		
Deduction from chargeable income of a notional interest on risk capital	0.5	
Risk capital definition	2.0	
Risk capital exclusions	2.0	
NID rate established by reference to the yield to maturity on Malta Government stocks with a remaining term of approximately 20 years plus a 5% premium	0.5	
Deduction capped at a maximum of 90% of chargeable income with the excess being carried forward to subsequent years	1.0	
Claimed through the tax return and requires all shareholders or owners to approve the claim an annual basis	1.5	
Allocate to the FTA 100% of the deduction availed of, plus a further 10%, up to a maximum of the profits allocated to the other taxed accounts	1.0	
Any excess is ignored	0.5	
	<u>9.0</u>	7

	<i>Available</i>	<i>Maximum</i>
(iv) Effective annual Malta tax with NID claim		
NID calculation – 7% of €10m	0.5	
Initial FTA allocation €700,000 under all three options	0.5	
No double tax relief claimed		
Chargeable income and tax due	0.5	
Foreign income account (FIA) allocation before NID	0.5	
Additional 10% FTA allocation ex FIA	1.0	
Tax allocation after NID	0.5	
Tax refund (nil) and effective Malta tax	0.5	
Flat rate foreign tax credit (FRFTC) with optimisation		
Optimised FRFTC	0.5	
Chargeable income and tax due, including 85% limitation to FRFTC	1.0	
FIA allocation before NID	0.5	
Additional 10% FTA allocation, FIA and FTA allocation after NID	1.5	
Tax refund and effective Malta tax	1.0	
FRFTC without optimisation		
FRFTC	0.5	
Chargeable income and tax due including 85% limitation to FRFTC	1.0	
FIA allocation before NID	0.5	
Additional 10% FTA allocation, FIA and FTA allocation after NID	1.5	
Tax refund and effective Malta tax	1.0	
	13.0	12
Presentation:		
Appropriate format of letter	1.0	
Logical development	1.0	
Effectiveness of communication, including use of an appendix	2.0	4
		35

	<i>Available</i>	<i>Maximum</i>
2 (a) Income tax and duty on documents		
Identify potential exemption from tax on capital gains made by non-resident on disposal of shares in a Malta company, which is not a property company	1.0	
ESL is a property company because the property is a school and not a factory, showroom, office or warehouse	1.0	
Value of ESL's assets attributable to immovable property situated in Malta, exceeds 50% of the total value of ESL's assets	1.0	
Both transfers are transfers of a controlling interest: 25%+ of share capital/voting rights and rights to profit	1.0	
Transfer value is higher of consideration and market value	0.5	
Market value determination: Net asset value + immovable property adjustment + goodwill + 10% investment adjustment	2.0	
Market value attributable to two holdings will differ based on formula because of difference in voting rights	1.0	
Inflation allowance deduction on the school's cost of acquisition	1.0	
Income tax on gain at 35%	0.5	
No available exemptions – ESL is a property company	0.5	
Duty payable on higher of consideration and real value of property	0.5	
Duty rate of €5 per €100 applies where immovable property makes up 75% or more of non-current assets	1.0	
Determination that 5% duty rate will apply to the transfer of shares in ESL	0.5	
Add back of disallowed liabilities to market value to arrive at real value	0.5	
Determination of disallowed liabilities	1.5	
Identification of shareholder loans as not registered/not excluded	0.5	
	<u>14.0</u>	12
(b) Calculation of income tax on capital gains and duty on documents		
Net asset value, immovable property adjustment, goodwill adjustment and 10% investment adjustment (0.5 x 4)	2.0	
Peter Grass		
Market value attributable (percentage + market value)	1.5	
Higher of consideration and market value	1.0	
Cost of acquisition deduction	0.5	
Inflation allowance deduction	1.0	
Tax due at 35%	0.5	
Jane Trunk		
Market value attributable (percentage + market value)	1.0	
Higher of consideration and market value	0.5	
Inflation allowance deduction	1.0	
Remainder of capital gain calculation and tax due at 35%	0.5	
Disallowed liabilities to be added back	2.0	
Company real value	0.5	
Higher of consideration and real value	0.5	
Duty due at €5 per €100	0.5	
	<u>13.0</u>	<u>13</u>
		<u>25</u>

	<i>Available</i>	<i>Maximum</i>
3 (a) (i) Value added tax (VAT) registration in Malta		
Obligation to obtain a VAT registration within 30 days from the commencement of the economic activity	1.0	
Small undertaking threshold for service provisions (€20,000) not exceeded, so has option to register in terms of Article 11	1.0	
Article 10 – charge VAT with right to claim back input VAT	1.0	
Article 11 – no output VAT but no right to claim back input VAT	1.0	
	<hr/>	4
(ii) Changing VAT registration from Article 10 to Article 11		
A taxable person registered under Article 11 can switch to an Article 10 VAT registration at any time	1.0	
A taxable person registered under Article 11 is obliged to cancel their Article 11 registration and apply for an Article 10 registration within 30 days from the date the small undertaking annual turnover threshold (€20,000) is exceeded	2.0	
A taxable person registered under Article 10 is precluded from switching to an Article 11 registration within the first 36 months from when they register in terms of Article 10	1.0	
To switch to an Article 11 registration, the annual turnover cannot exceed the exit turnover threshold (€17,000)	1.0	
	<hr/>	4
	5.0	
	<hr/>	
(iii) Impact of VAT registration on intra-Community acquisitions		
Purchase of furniture from a French VAT registered person is a supply of goods with transport and an intra-Community acquisition (ICA) in Malta	1.0	
Article 11 registration – If ICAs exceed €10,000 in a year obligation to register in terms of Article 12 and pay VAT in Malta on the ICA	1.5	
No French VAT if VAT number provided to French supplier – intra-Community supply	0.5	
Must remain so registered and pay VAT at 18% on ICA for a further full year and may cancel the Article 12 registration only if the value of ICAs does not exceed the ICA threshold in the year which applies for the cancellation and in the preceding calendar year	1.5	
Article 11 registration – If ICAs do not exceed €10,000 option to register in terms of Article 12 but only sensible to do so if French VAT rate greater than Malta VAT rate	1.0	
Article 10 registration – self-assess VAT on the ICA in Malta but then qualifies for an input tax credit, resulting in a neutral VAT position	1.5	
	<hr/>	5
	7.0	
	<hr/>	
(b) (i) VAT treatment of rental income		
Leases of immovable property are by default exempt without credit for Maltese VAT purposes	1.0	
Exception for leases of immovable properties by a limited liability company to a taxable person registered in terms of Article 10, for the purpose of the economic activity of that other person	1.5	
Conclusion: the outlet and area (space) rentals by HSL will be subject to VAT at the standard 18% rate	0.5	
	<hr/>	3
(ii) VAT treatment of multi-purpose vouchers (MPVs)		
Definition of MPV for VAT purposes	1.0	
Not possible to determine VAT due when MPV issued	1.0	
VAT treatment of sale of MPV and the exchange of the MPV for goods/services	2.0	
Determination of taxable value	1.0	
	<hr/>	4
	5.0	
	<hr/>	4
		<hr/> 20

	<i>Available</i>	<i>Maximum</i>
4 (a) (i) Applicability of participation exemption to dividends received		
AH resident and domiciled in Malta, taxable on a worldwide basis	0.5	
Equity shareholding: two out of three rights	1.5	
Participating holding (PH): one out of six conditions (0.5 each)	3.0	
Investment in AM meets PH definition: 5% + of share capital	1.0	
Investment in AF meets PH definition: investment of €1.164m + held uninterrupted for 183 days+	1.0	
Anti-abuse provisions: any one out of three (0.5 x 3)	1.5	
Investment in AM meets anti-abuse provisions: trading not passive income	1.0	
Investment in AF meets anti-abuse provisions, interest received does not qualify as passive interest and royalties as defined as it is subject to foreign tax of at least 5%	1.5	
	<u>11.0</u>	9
(ii) Applicability of participation exemption to share of profit received		
Application of the PH concept to an investment in a foreign partnership granting rights equivalent to equity shareholding and participating holding rights	2.0	
PH condition satisfied in the case of SAA	0.5	
Anti-abuse conditions not satisfied – passive royalty income subject to foreign tax of less than 5%	1.0	
	<u>3.5</u>	3
(b) Maria's liability to tax in Malta on her foreign source employment income		
Resident and domiciled in Malta – taxable on a worldwide basis	0.5	
Absence considered to be of a temporary nature and retention of personal connections in Malta	1.0	
Employment income arises from activities carried out in Germany	0.5	
Germany entitled to tax on a source basis if any one of three conditions is satisfied:	0.5	
– Maria is present in Germany for a period or periods exceeding in total 183 days in any 12-month period commencing or ending in the tax year	1.0	
– Maria's salary is paid by or on behalf of an employer who resides in Germany	0.5	
– Maria's salary is borne by a permanent establishment which her employer has in Germany	0.5	
Conditions 1 and 2 both satisfied	0.5	
Malta as the residence country still entitled to tax but required to grant double tax relief	1.0	
Maria entitled to 15% flat tax rate on her foreign salary income since earned in terms of a contract requiring her to work outside Malta, and not for the Government of Malta nor on board a means of transport connected to a Maltese entity	1.5	
Calculation of tax on salary and fringe benefit and determination of further tax due	1.5	
	<u>9.0</u>	8
		<u>20</u>