Answers

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Dear Sirs

Malta tax implications of the Malta Hold Ltd group

As companies resident and domiciled in Malta, Malta Hold Ltd, Malta Consult Ltd, Malta Prop Ltd and Malta Fashion Ltd are taxable in Malta on a worldwide basis.

Taxation of Malta Consult Ltd

Malta Consult Ltd is taxable in Malta at the standard rate of 35%.

Given that the employees of Malta Consult Ltd may provide services to foreign clients, and may even carry out field work in other jurisdictions, it is important to understand whether there may be any tax implications in those other jurisdictions. Where Malta has a double tax treaty based on the OECD Model with the other country, on the premise that Malta Consult Ltd is in the other country for a limited period and it does not have an office in the other jurisdiction, it may be concluded that Malta Consult Ltd does not have a permanent establishment in those jurisdictions. However, where Malta Consult Ltd provides services to a company which is resident in a country with which Malta does not have a double tax treaty, it is important to determine whether Malta Consult Ltd will be taxable in the said jurisdiction.

On the understanding that Malta Consult Ltd does not have a permanent establishment outside Malta, and in view of its activities being of a trading nature, notwithstanding that it provides services to companies incorporated outside Malta, its profits will be allocated to the Maltese taxed account (MTA).

Where Malta Consult Ltd is subject to foreign tax, it may claim relief for double taxation against the Malta tax charged.

Taxation of Malta Prop Ltd

It is important to determine whether Malta Prop Ltd's income will be taxable as trading income or as rental income. There are indicators that the rentals of Malta Prop Ltd may qualify as trading income. For example, the company was set up to own, manage and rent immovable property, and that is consistent with what Malta Prop Ltd actually does; the acquisition of the property was funded by means of a business loan; and the number of properties involved, the length of rental contracts and the organisation around the rental of properties, including the different advertising mechanisms (from estate agents to international and personal websites), combine to indicate that the income derived by Malta Prop Ltd from the rental of the apartments will be treated as active/trading income.

The taxation of the income derived from the rental of Sunflower Court and Sunshine Court will differ. Income derived from the rental of apartments which are licensed under the Malta Travel and Tourism Services Act may not benefit from a flat rate of taxation of 15%. Therefore, the income derived from the rental of Sunflower Court will be taxable at 35%, subject to claiming all the expenses incurred in the production of the income as a deduction. Profits derived therefrom will be allocated to the immovable property account (IPA). The income derived from the rental of Sunshine Court on the other hand may, at the option of Malta Prop Ltd, be taxable at a flat rate of 15%, which tax will be final with no set-off or refund available in respect of the tax so charged. The taxed profits from the rental of Sunshine Court will be allocated to the final taxed account (FTA), or if the option is not taken, to the IPA.

Taxation of dividends derived by Malta Hold Ltd

The tax implications of dividends derived by Malta Hold Ltd from IRL Prop Ltd will depend on whether or not Malta Hold Ltd's holding in IRL Prop Ltd satisfies the conditions of the participation exemption.

In order for the participation exemption to apply, Malta Hold Ltd's holding in IRL Prop Co 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 Malta Hold Ltd to at least two of the following rights (the '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 that company.

A property company is defined as a company which owns immovable property situated in Malta, therefore given that IRL Prop Ltd only owns immovable property outside Malta, it does not qualify as a 'property company'.

Since Malta Hold Ltd's holding is of ordinary shares carrying the right to vote, it is reasonable to assume that the holding will qualify as an equity holding. Once it has been established that this is an equity holding, Malta Hold Ltd's holding in IRL Prop Ltd must also qualify as a participating holding.

Malta Hold Ltd holds less than 10% of IRL Prop Ltd, and the current value of its investment in IRL Prop Ltd is €1,000,000. However, the total value of Malta Hold Ltd's investment in IRL Prop Ltd on the date on which it was acquired was more than €1,164,000 and that holding has been held for an uninterrupted period of more than 183 days. In view of this, Malta Hold Ltd's holding in IRL Prop Ltd qualifies as a participating holding.

With respect to dividends, in order for the participation exemption to apply, a further condition must be satisfied. Given that IRL Prop Ltd is incorporated in an EU country this condition is also satisfied.

All the conditions for the application of the participation exemption are satisfied, therefore any dividends derived by Malta Hold Ltd from IRL Prop Ltd will be exempt from tax in Malta. Such profits will be allocated to the FTA.

Any dividends derived by Malta Hold Ltd from Malta Consult Ltd will not be taxable in view of Malta's imputation system. Furthermore, Malta Hold Ltd may claim a tax refund of the Malta tax charged on Malta Consult Ltd's profits. The Malta tax charge is defined as the tax due prior to accounting for any double taxation relief, and given that the profits of Malta Consult Ltd are allocated to the MTA and not to the foreign income account (FIA), Malta Hold Ltd may benefit from the 6/7ths tax refund, even if Malta Consult Ltd claims double taxation relief. Any dividends derived from Malta Consult Ltd will be allocated to Malta Hold Ltd's MTA, and the tax refund will be allocated to Malta Hold Ltd's untaxed account.

Malta Hold Ltd will not be taxable on the profits distributed from Malta Prop Ltd's FTA, and such dividends are allocated to Malta Hold Ltd's FTA. Furthermore, in terms of the imputation system, Malta Hold Ltd would not be taxable on profits distributed by Malta Prop Ltd from its IPA, and such profits are allocated to Malta Hold Ltd's IPA. However, no tax refunds are available on profits distributed from the IPA.

Utilisation of the tax losses of Malta Fashion Ltd

Malta Hold Ltd, Malta Consult Ltd, Malta Prop Ltd and Malta Fashion Ltd all qualify as members of a group of companies, given that Malta Consult Ltd, Malta Prop Ltd and Malta Fashion Ltd, are all 100% subsidiaries of Malta Hold Ltd, and all companies are resident in Malta. Therefore, the group may benefit from the group relief provisions as an alternative to carrying the losses forward to offset against the future profits of Malta Fashion Ltd.

Had the tax losses of Malta Fashion Ltd been taxable profits, these would have been allocated to the MTA, meaning that on the premise that the accounting period of all companies begins and ends on the same dates, the tax losses of Malta Fashion Ltd may be offset against the taxable income allocated to the IPA or MTA of Malta Hold Ltd, Malta Consult Ltd or Malta Prop Ltd.

Given that Malta Hold Ltd is not taxable on dividends it derives from its subsidiaries, either by virtue of the imputation system or by virtue of the participation exemption, and the rental income from Sunshine Court derived by Malta Prop Ltd which benefits from the flat rate of tax of 15% is allocated to the FTA, the group will receive the maximum benefit if the tax losses are offset either against the profits derived by Malta Consult Ltd or against the profits derived by Malta Prop Ltd from the rental of Sunflower Court.

The profits derived by Malta Consult Ltd from its consultancy services will be taxed at a maximum of 5% through the application of the tax refund system, while the profits derived by Malta Prop Ltd from the rental of Sunflower Court will be taxable at 35%, without the possibility of benefitting from the tax refund system. Thus it would be advisable to surrender the tax losses of Malta Fashion Ltd to Malta Prop Ltd, and Malta Prop Ltd would not be taxable on its full profits derived from Sunshine Court, and may carry forward the excess to subsequent years.

Should you require any further information or clarification, please do not hesitate to contact me.

Yours faithfully

Tax consultant

2 (a) Transfer of immovable properties by Maz Ltd and Peter Zammit

Transfer of the whole floor in a premium office block

Income tax implications

The transfer of the whole floor will be taxable under the property transfer rules in view of it being a trading asset.

In terms of the property transfer rules, where the tax relief for the transfer of assets between group companies would apply other than for the asset not being a capital asset, an exemption will apply where the transfer is part of a restructuring involving the transfer of the whole or part of a company's business to another company, and the property has been owned for over 12 years. The exemption would not apply in this case, however, because the property was acquired less than 12 years ago. Therefore, the transfer will be taxable at 12%. However, given that the transfer will occur prior to the expiry of 12 years from the date of acquisition, Maz Ltd may opt out of the application of the property transfers rules, in which case the transfer would be taxable as trading income as it represents property acquired for the purpose of profit-making by sale.

Given that the property is to be transferred at its cost of acquisition, and there are no rules requiring the transfer of a trading asset to be effected at market value, the transfer of the property to Mit Ltd will not give rise to a taxable event. Whereas if the transfer is taxed under the final tax on property transfers, the transfer value will be the higher of the cost price and the market value.

Duty on documents and transfers (stamp duty) implications

The transfer of the property from Maz Ltd to Mit Ltd may qualify for an exemption from stamp duty in view of the two companies qualifying as a group of companies, given that they are controlled and beneficially owned to the extent of more than 50% by the same shareholders.

In order for this exemption to apply, the individual, direct and indirect, beneficial owners of the companies must be the same and each individual must hold substantially the same percentage interest in the share capital and voting rights in each company. Given that Paul will hold less than 20% in Mit Ltd, he can be ignored, meaning that Maz Ltd and Mit Ltd will be held by the same shareholders. Furthermore, given that the difference in Peter's holding in Maz Ltd and Mit Ltd is less than 20%, it is deemed that he has substantially the same percentage interest in both companies.

The transfer of the property will therefore qualify for exemption from stamp duty.

Transfer of warehouse

Income tax implications

The law provides for an exemption from tax on the transfer of property by a company to its shareholder, or to an individual related to its shareholder, in the course of the winding up of the company, provided the shareholder is an individual who owns at least 95% of the share capital and voting rights of the company.

An individual is deemed to be related to a shareholder where such individual is the spouse, descendant or ascendant in direct line, or spouse of such descendant/ascendant or, in the absence of any descendants in the direct line, their brother or sister or a descendant of their brother or sister.

In the case at hand, Maz Ltd is 100% held by Peter, and Paul is his only son. The above two conditions are therefore satisfied.

In order for the exemption to apply, the following conditions must also be satisfied:

– Peter must have held directly or indirectly not less than 95% of the share capital and voting rights of the company transferring the property for a period exceeding five years immediately preceding the date of transfer of the property;
– The property must consist of a dwelling house, garage, shop, store or warehouse;
– The warehouse must have been held as a capital asset by Maz Ltd for a period exceeding five years immediately preceding the transfer of the property.

All the above conditions are satisfied, as Peter has been the 100% shareholder of Maz Ltd since its incorporation, and Maz Ltd has owned the warehouse as a capital asset for the last ten years.

Duty on documents and transfers implications

The Duty on Documents and Transfers Act contains a similar exemption to the one above from income tax. However, in order to benefit from the exemption from stamp duty, the transfer of the immovable property may only be made to the 95% or more shareholder of the company. The transfer by Maz Ltd to Paul will therefore give rise to duty of €5 for every €100 or part thereof of value of the warehouse.

***Causa mortis* transfer of house**

Income tax implications

A transfer *causa mortis* is not deemed to be a transfer for the purposes of income tax, and there is no charging provision which charges the transfer of immovable property by way of inheritance. The transfer *causa mortis* will therefore not be subject to income tax.

Duty on documents and transfers implications

A transfer *causa mortis* is not deemed to be a transfer for the purposes of the Duty on Documents and Transfers Act, except where specifically provided for. However, in terms of law, duty of €5 for every €100 or part thereof is due on the value of every declaration of *causa mortis* transfers of immovable property.

Paul Zammit is to make a declaration of the transfer *causa mortis* by means of a public deed, which must contain details of the transferee (Paul) and the transferor (Peter), the date and place of death of the transferor (Peter), the particulars of the immovable property as well as a statement of the true value of the immovable property.

No duty is due where the immovable property transferred *causa mortis* is a dwelling house which is transferred by the transferor (Peter) to his descendants in the direct line, such as Paul, and at the time of the transfer, and during the whole period of three years preceding the transfer, the dwelling house was the ordinary residence of Peter. Ordinary residence is defined as the principal residence being a dwelling house which is the only or main residence of a person. This condition is therefore satisfied, and no duty should apply on the transfer *causa mortis*.

However, in order for the exemption from duty to apply, the deed of transfer *causa mortis* must be made within one year from the relative succession, and notice thereof must be given to the Commissioner within 15 days after the date of publication of the deed, or within one year, whichever is the later.

(b) **Rental or transfer of immovable property by Paul Zammit**

Sale of warehouse

Should Paul transfer the warehouse to third parties, the opt out from the application of the 12% rate of tax on the gain derived from the transfer where the property is transferred within 12 years from the date of acquisition would not be available, and the transfer would be subject to a flat rate of tax of 12% on the higher of the market value or the consideration.

Transfer of inherited property

Should Paul transfer the property inherited from Peter in less than three years (as proposed), tax will be due at 12% of the excess, if any, of the transfer value over its acquisition value (as declared in the *causa mortis* declaration). The exemption for the transfer of own residence will not apply even though the property inherited by Paul from Peter will be deemed to have been owned by Paul for the whole period that Peter owned and occupied the property. Paul would not have occupied the house for such a period, but just owned it. If, however, Paul were to transfer the house after having occupied it as his own residence for at least three years, the transfer would be exempt from tax.

Transfer of own residence

Provided the property is disposed of within 12 months of vacating the premises, the transfer of Paul's current dwelling house will not give rise to any income tax implications as he has owned and occupied the house as his own residence for a period of at least three years preceding the date of transfer. Own residence has been defined in (a) above, 'ordinary residence'.

3 **(a)** **Anne Goll**

Personal tax status

Anne will be ordinarily resident but not domiciled in Malta; she will therefore be taxable in Malta on all income and capital gains arising in Malta, and all income arising outside Malta which is received in a Maltese bank account.

She will therefore be taxable on her employment income and director's fees derived from Gozo International Airport Ltd (GIAL), both with respect to the work carried out in Malta and with respect to the work carried out outside Malta, as all her salary and director's fees are to be paid into a bank account in Malta.

With respect to her salary and director's fees from Swiss Airports Ltd (SAL), given that the source of the income is outside Malta and they are received in a bank account outside Malta, these will not be taxable in Malta.

Residence status in terms of the Treaty

As an individual resident in Malta and Switzerland, Anne will have income arising in Malta, in Switzerland and possibly also in other countries. Therefore, the application of the Malta–Switzerland double tax treaty (the 'Treaty') needs to be considered in order to determine where, for the purposes of the Treaty, Anne is tax resident. In terms of the Treaty, where an individual is deemed to be tax resident in both Malta and Switzerland, a tie-breaker rule is applied in order to determine the tax residence of the individual. The rule provides that the individual will be resident where:

– she has her permanent home. Anne has a permanent home in both Malta and Switzerland, given that she owns accommodation in Switzerland and is renting accommodation in Gozo. It is therefore not possible to determine her residence on the basis of this test;

– she has a permanent home in both countries, she will be deemed to be resident in the country to which her personal and economic relations are closer (location of centre of vital interests). Anne is employed in both Malta and Switzerland, albeit her role in Malta requires her to spend more time in Malta. Furthermore, her partner has moved to Malta with her, so her personal ties are closer to Malta. Given that the OECD model gives more weight to personal ties in determining the centre of vital interests, Anne will be deemed to be tax resident in Malta for the purposes of the Treaty.

Application of the Treaty with respect to her employment income and director's fees

Given that Anne is deemed to be tax resident only in Malta in terms of the Treaty, her employment income is only taxable in Malta. However, where she exercises her employment in Switzerland, Switzerland may claim taxing rights where any of the following criteria are satisfied:

– She is present in Switzerland for a period or periods exceeding 183 days in any 12-month period, commencing or ending in the fiscal year concerned; or

– Her salary is paid by an employer resident in Switzerland; or

– The remuneration is borne by a permanent establishment which the employer has in Switzerland.

With respect to the one month in which Anne works for GIAL in Switzerland, Switzerland has no taxing rights, as none of the above conditions are satisfied, as Anne is tax resident in Malta in terms of the Treaty, her employer is a Maltese resident company and it does not have a PE in Switzerland.

However, with respect to the one month in which she works for SAL in Switzerland, Switzerland does have primary taxing rights over the income, given that the employer (SAL) is tax resident in Switzerland.

In terms of the Treaty, where an individual derives directors' fees by virtue of their being a member of the board of directors of a company, the country of tax residence of the company has primary taxing rights over the said fees. The director's fees derived from GIAL will therefore be taxable only in Malta, but Switzerland may claim taxing rights over the director's fees derived from SAL.

Application of the highly qualified persons rules

In order for an individual to benefit from the reduced rate of tax under the highly qualified persons rules, they must be employed under a qualifying contract of employment, which employment qualifies as an eligible office. In order to qualify as an eligible office, the employment must be listed in the Schedule of the Rules. With respect to employments with undertakings holding an aerodrome licence issued by the Authority for Transport in Malta, the Schedule of the Rules only refers to employment as chief executive officer. This implies that Anne cannot benefit from the highly qualified persons rules with respect to her employment as commercial officer (CO) with GIAL.

Application of the rules relating to employment outside Malta

In order to benefit from the 15% tax rate on income from employment exercised outside Malta, an individual must be employed under a contract of service requiring the performance of duties mainly outside Malta. While Anne will be spending a considerable proportion of her time abroad each year, this is still for less than half the year, and it does not appear that her contract of service requires her to perform her duties mainly outside Malta; therefore the 15% tax rate will not apply.

(b) Elton Jones

As an individual who is neither resident nor domiciled in Malta, Elton is taxable in Malta only on his income or capital gains arising in Malta. He is therefore taxable in Malta on the income generated from his performances in Malta, unless otherwise restricted in terms of the double tax treaty between Malta and Ireland (the 'Treaty').

In terms of the Treaty, income derived by Elton from his entertainment activities exercised in Malta may be taxed in Malta, and he can claim relief in Ireland for the tax paid in Malta.

Income paid to a non-resident individual is generally subject to a withholding tax of 25%. There are special rules with respect to entertainment activities exercised in Malta by non-residents whereby, in the case of a non-resident who derives income from entertainment activities exercised in Malta for a period not exceeding 15 days, the payor must only withhold tax at 10% on the gross amount paid to the non-resident, with right of set-off or refund. However, this reduced rate of withholding tax will not apply to Elton because he will perform in Malta for more than 15 days.

As Elton will be performing in Malta for more than 15 days, he should submit a tax return in Malta and pay tax at the non-resident rates. Any tax paid on his entertainment activities will be allowed as a credit against his tax liability. Where he has paid tax in excess of his liability, the excess will be refunded.

When submitting his tax return in Malta, Elton may claim as a deduction against his income, all expenses which were exclusively incurred in the production of the income. Such expenses would include his flight tickets, and part of his accommodation expenses.

Elton will derive €28,000 from his entertainment activities in Malta [€28,000 = €1,500 x (5 + 7) days + €2,500 x 4 days]. As it appears that his expenses are limited, it is likely that he will need to pay additional tax over and above that withheld at 25% on the submission of his tax return, given that the non-resident rates apply.

4 (a) Hill Ltd

Value added tax (VAT) implications of the construction and rental of the offices

The letting of immovable property is generally exempt without credit for VAT purposes. However, where the letting is by a limited liability company to a person registered under Article 10 of the Value Added Tax Act for the purpose of the economic activity of that person, the letting of immovable property is VATable at 18%.

Given that Hill Ltd built the offices with the intention of letting to companies registered under Article 10 of the Value Added Tax Act, it was entitled to register for VAT purposes in 2009 under Article 10 of the VAT Act and claim back the input VAT incurred on the construction.

Upon the letting of the offices to the tenants, Hill Ltd must charge VAT at 18% on the rents.

VAT implications of change of use

The change of use of the top floor into an apartment changes the nature of the supply and given that the rental of the apartment does not require a licence under the Malta Travel and Tourism Services Act, the supply is no longer a VATable supply but becomes an exempt without credit supply.

The change of nature of supply will give rise to an adjustment in favour of the VAT authorities in terms of the capital goods scheme, of part of any input VAT claimed by Hill Ltd on capital goods or on services procured to realise, transform or improve capital goods. Immovable property and furniture qualify as capital goods.

In terms of the capital goods scheme, an adjustment is made where the immovable property, for which input tax was previously deducted, is used for the purposes of operations in respect of which VAT is not deductible. With respect to immovable property, the period of reference is 20 years and the adjustment is made for 1/20th of the input tax initially deducted for each year in which the change in use occurs. In the case of movable tangible goods, the period of reference is five years and the annual adjustment would be one-fifth. Where the immovable or movable property is to be used totally for operations for which VAT is not deductible, the adjustment is to be made once for the whole period of adjustment still to be covered, including the year in which the change occurs.

Given that the top floor is to be rented to the shareholder for a period of 16 years starting from 2015, the first 14 years of the new lease will fall within the 20-year period of reference for the construction works. Hill Ltd will need to make a capital goods adjustment of 14/20ths of the VAT incurred on the construction works of that floor. Given that the VAT incurred on the construction was €126,000 (€700,000 x 18%) for all ten floors and the expenses were split equally over the ten floors, the adjustment in favour of the VAT authorities will be €8,820 (14/20 x €126,000/10).

No capital goods scheme adjustment would need to be made in respect of furniture because the five-year period of reference which commenced in 2009 has elapsed prior to 2015.

(b) Malta Bank Ltd

Registration position

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

However, there is an exception allowed only to insurance companies and credit institutions whereby, as Malta Bank Ltd provides banking services to customers established outside the European Union (EU), it will be entitled to claim credit on a portion of its input tax attributable to its banking operations to non-EU clients as per its partial attribution formula.

While persons providing exclusively exempt without credit supplies are not entitled to register for VAT (under Article 10 of the VAT Act), as Malta Bank Ltd carries on an economic activity and is likely to be entitled to claim input tax credits, the company may register for VAT purposes (under Article 10).

Right to claim credit on the refurbishment

Given that Malta Bank Ltd's turnover from customers based outside the EU was 60% in 2010, Malta Bank Ltd may claim 60% of the input tax incurred on the refurbishment of its offices.

The refurbishment costs of Malta Bank Ltd were €1,500,000, and the VAT charged was €270,000. Of this, €162,000 (€270,000 x 60%) could be claimed by Malta Bank Ltd in 2010 as the proportion of VAT attributable to its non-EU business. The remaining €108,000 would not be reclaimable.

Effect of the changes in customer base

Until 2015, no adjustments in terms of the capital goods scheme are required as there was no change in the proportion of turnover until then.

As the turnover of Malta Bank Ltd in 2015 changed from 60:40 to 70:30 (non-EU:EU), with 70% of its customers established outside the EU, Malta Bank Ltd is entitled to make an upward adjustment to its VAT claim on the refurbishment in terms of the capital goods scheme. With respect to immovable property, the adjustment is made for 1/20th of the input tax initially deducted for each year for which the change in use occurs. The upward adjustment is made on the percentage increase of the non-EU client base for the given year (10%, being 60% to 70%) compared to the initial percentage in 2010, and the comparison has to be made each year throughout the period of reference for immovable property (20 years). In 2015, the adjustment will be made by means of the following formula (10% x €270,000/20) meaning an adjustment in favour of Malta Bank Ltd of €1,350.

Should Malta Bank Ltd achieve the planned 50:50 ratio of non-EU:EU customers in 2016, the bank will once again need to make a capital goods scheme adjustment, which will be (10%, being 60% to 50%) in favour of the VAT authorities this time. The adjustment will be calculated using the same formula, with the difference being a refund to the VAT office of €1,350 (10% x €270,000/20).

5 (a) Sailfar Ltd

(i) Income tax implications

Lease of the ferry boat

As a company incorporated outside Malta, but tax resident in Malta because its management and control are exercised in Malta, Sailfar Ltd is taxable in Malta on all income and gains arising in Malta, and all income arising outside Malta which is received in Malta.

While the lease payments may be deemed to arise outside Malta, given that the ferry is used outside Malta, as Sailfar Ltd receives the lease payments in a Maltese bank account, it will be taxable in Malta on the lease payments.

In terms of the double tax treaty between Malta and Turkey, profits derived by a company having its effective management in Malta from the operation of ships in international traffic is only taxable in Malta. This means that Turkey has no right to tax Sailfar Ltd on the lease payments it derives from Turk Ferry Ltd, and Sailfar Ltd has the right to claim exemption from the 15% withholding tax which would otherwise be payable in Turkey

Besides deducting all expenses wholly and exclusively incurred in the production of the lease income, Sailfar Ltd can also claim a wear and tear deduction on the ferry boat over a minimum period of ten years.

Sale of the ferry boat

In terms of the double tax treaty between Malta and Turkey, even if the ferry boat is situated in Turkish territorial waters at the point of sale, Turkey will be restricted from taxing any gain derived by Sailfar Ltd, as the treaty provides that gains derived by Sailfar Ltd from the alienation of a ship operated in international traffic is only taxable in the country of residence of the company, which is Malta. The transfer of the ferry by Sailfar Ltd to Ferry Italia Ltd will not give rise to tax implications in Malta as the ferry is a capital asset of Sailfar Ltd, and the law does not provide for the taxation of capital gains derived from the transfer of vessels.

However, given that Sailfar Ltd has claimed capital allowances on the ferry, the transfer may give rise to a balancing charge or balancing allowance. Where capital allowances have been claimed on an asset and the asset is sold or otherwise transferred under an onerous title, whether in use or not, and the transfer occurs before the source of income in respect of which capital allowances were allowed against has ceased to exist, the law provides that Sailfar Ltd must, at the same time as it prepares its tax return, prepare a balancing statement for the ferry.

The balancing statement will result in a loss or gain on the transfer of the ferry. The balancing allowance is the amount by which the capital expenditure exceeds the sum of the total depreciation and the sale price. The balancing charge is the amount by which the total depreciation and the sale price exceed the capital expenditure.

Should a balancing charge occur, then, since Sailfar Ltd acquired another ferry to replace the first ferry within 12 months of its disposal, Sailfar Ltd may elect to deduct the value of the balancing charge from the cost of the new ferry. The election must be made by notice in writing to the Commissioner and will result in less capital allowances being claimed on the new ferry.

(ii) Balancing statement and base cost of replacement ferry

	€
Cost of acquisition of first ferry	12,000,000
Accumulated wear and tear: (5/10 years * 12,000,000)	(6,000,000)
Written down value	6,000,000
Sales proceeds	(9,000,000)
Balancing charge	3,000,000
Cost of acquisition of second ferry	8,000,000
Rollover of balancing charge	(3,000,000)
Base cost of second ferry	5,000,000

(b) The persons to whom the exemption from the duty on documents and transfers applies are:

(i) Collective investment schemes licensed under the Investment Services Act.

(ii) Persons holding an investment services licence issued under the Investment Services Act and whose activities comprise the provision of management, administration, safekeeping or investment advice to collective investment schemes in terms of the Investment Services Act.

(iii) Companies having more than half of their ordinary share capital, voting rights and rights to profits held by persons, or by a trustee of a trust the beneficiaries of which are all persons, who:

– are not resident in Malta; and
– are not owned and controlled directly or indirectly by persons resident and domiciled in Malta;

and such companies have been determined by the Commissioner as having the majority of their business interests outside Malta.

(iv) A retirement scheme, licensed under the Special Funds (Regulation) Act, which is set up as a trust or fiduciary arrangement, and whose beneficiaries consist solely of individuals who are not resident in Malta, or a company, where the trustee, fiduciary or company as the case may be proves to the Commissioner that the retirement scheme or company carries on, or intends to carry on, business, or has, or intends to have, business interests to the extent of more than 90% outside Malta.

The holding of marketable securities in, and the carrying on of business activities with, a company or companies referred to in (iii) or (iv) is deemed to constitute business interests outside Malta.

		Available	Maximum
1	Maltese companies taxed on a worldwide basis	0·5	
	Taxation of Malta Consult Ltd		
	Taxable at 35%	0·5	
	Will activities in other States give rise to tax in source State?	0·5	
	Limited period of activities	0·5	
	No office in other jurisdictions	0·5	
	No permanent establishment in other jurisdictions	1	
	If no treaty – risk	1	
	Profits allocated to MTA	1	
	Can claim relief for any foreign tax	0·5	
	Taxation of Malta Prop Ltd		
	Trading income or rental income	0·5	
	Indicators:		
	– Company's purpose and activity same	0·5	
	– Funded by business loan	0·5	
	– Number of properties and length of contracts	0·5	
	– Different advertising mechanisms	0·5	
	Rental will be treated as trading income	0·5	
	MTA licensed rentals do not benefit from 15% rate	1	
	Taxable at 35% and claim deductions	0·5	
	Income allocated to IPA	0·5	
	Rental of Sunshine Court taxable at 15%	1	
	No set-off or refund	0·5	
	Income allocated to FTA	0·5	
	Taxation of dividends derived by Malta Hold Ltd		
	Must qualify as equity holding	0·5	
	Definition of equity holding	0·5	
	Equity holding rights (0·5 marks each)	1·5	
	IRL Prop Ltd is not a property company	1	
	Qualifies as an equity holding	0·5	
	Is there a participating holding?	0·5	
	Holding less than 10%	0·5	
	Investment of more than €1,164,000	1	
	Held for more than 183 days	0·5	
	IRL Prop Ltd is incorporated in EU	0·5	
	Participation exemption applies	0·5	
	Income allocated to FTA	0·5	
	No tax on dividends from Malta Consult Ltd: imputation system	0·5	
	Definition of tax charge	0·5	
	Application of 6/7ths refund	1	
	Dividends allocated to MTA	0·5	
	Refund allocated to UTA	0·5	
	No tax on distributions from Malta Prop Ltd's FTA	0·5	
	No tax on dividends distributed from IPA: imputation system	0·5	
	Allocation to same tax account as distributed from: FTA/IPA	0·5	
	No refunds on dividends from IPA	0·5	

	Available	*Maximum*
Utilisation of losses		
Qualify as group of companies	1	
All companies resident in Malta	0·5	
Alternative to carry forward in Malta Fashion Ltd	0·5	
Malta Fashion Ltd losses, had they been profits: MTA	0·5	
Accounting periods begin and end on same dates	0·5	
Tax losses may be offset against income allocated to IPA or MTA	1	
No group relief on FTA profits (exempt or flat rate)	0·5	
Group relief against profits of Malta Consult Ltd or Malta Prop Ltd	1	
Malta Consult Ltd effective tax rate of 5% due to refund	0·5	
Malta Prop Ltd taxed at 35%, no refund	0·5	
Best to surrender losses to Malta Prop Ltd	0·5	
Carry forward any excess	0·5	
	33·5	31
Professional marks		
Format and presentation	2	
Effectiveness of communication	2	4
		35

			Available	Maximum
2	(a)	**Transfer of whole office floor**		
		Taxable under property transfers rules	0·5	
		Where tax relief not available as not capital asset	0·5	
		Intra-group transfer of property owned for more than 12 years	0·5	
		Property acquired less than 12 years ago	0·5	
		Taxable at 12%	0·5	
		Transfer before 12 years – opt out	0·5	
		Trading income as property acquired for profit making by sale	1	
		Property can be transferred at its cost of acquisition – no tax	1	
		If property transfers rules apply: higher of market value and price	0·5	
		Stamp duty exemption	0·5	
		Direct and indirect beneficial owners must be the same	0·5	
		Same percentage interest	0·5	
		Ignore shareholders with less than 20%	0·5	
		Ignore difference of less than 20%	0·5	
		Transfer of warehouse		
		Exemption for transfer to relation of shareholder	0·5	
		In the course of winding up	0·5	
		Shareholder owns at least 95%	0·5	
		Definition of related	1	
		Conditions are satisfied	0·5	
		95% for over five years	0·5	
		Warehouse	0·5	
		Capital asset for more than five years	0·5	
		No stamp duty exemption: shareholder only	1	
		5% duty	0·5	
		***Causa mortis* transfer**		
		Not subject to tax on capital gains	0·5	
		Causa mortis is not a transfer under DDTA unless provided for	0·5	
		5% on declaration of *causa mortis*	0·5	
		Declaration by public deed including transferee and transferor	0·5	
		Date and place of death	0·5	
		Particulars of immovable property	0·5	
		True value of immovable property	0·5	
		Exemption where dwelling house to a descendant in direct line	0·5	
		Dwelling house at time of transfer and for last three years	0·5	
		Dwelling house was ordinary residence	0·5	
		Definition of ordinary/own residence	0·5	
		Deed made within one year	0·5	
		Notification to Commissioner within 15 days	0·5	
			20·5	19
	(b)	**Sale of warehouse**		
		Opt out not available	1	
		Taxable at 12%	1	
		Sale of own residence		
		No tax on transfer of dwelling house	0·5	
		Has owned and occupied for three years	0·5	
		Provided disposed of within 12 months of vacating property	0·5	
		Transfer of property inherited from Peter		
		If sold before period of three years exemption will not apply	0·5	
		Tax at 12% on the excess	0·5	
		Even though deemed to have owned	0·5	
		Did not live in house for three years	0·5	
		If transfer after living in it for three years will be exempt	0·5	6
				25

			Available	Maximum
3	(a)	**Personal tax status**		
		Tax status/basis of taxation	1	
		Application to income from GIAL – taxable	1	
		Application to income from SAL – not taxable	0·5	
		Tie-breaker rule	0·5	
		Permanent home	0·5	
		Permanent home in both countries	0·5	
		Centre of vital interests	0·5	
		Personal ties to Malta	0·5	
		Malta is residence state	0·5	
		Application of double tax treaty		
		Employment income taxable in Malta	0·5	
		Unless exercises employment in Switzerland	0·5	
		183 day period	0·5	
		Employer	0·5	
		Permanent establishment	0·5	
		One month's work in Switzerland for GIAL – only taxable in Malta	0·5	
		One month's work in Switzerland for SAL – taxable in Switzerland	0·5	
		Taxation of directors' fees	0·5	
		Director's fees from GIAL – only taxable in Malta	0·5	
		Director's fees from SAL – taxable in Switzerland	0·5	
		Application of highly qualified persons rules		
		Only applicable to CEO	1	
		Cannot benefit from HQPR	0·5	
		Application of rules relating to employment outside Malta		
		Performance of duties mainly outside Malta	1	
		Cannot benefit from 15% rate	0·5	
			13·5	13
	(b)	Tax status	0·5	
		Entertainment activities exercised in Malta taxed in Malta	1	
		Double tax relief in Ireland	0·5	
		Withholding tax is generally 25%	0·5	
		Where entertainment activities for less than 15 days	0·5	
		10% rate applies	0·5	
		Not applicable performs for more than 15 days	0·5	
		As more than 15 days taxable at non-resident rates	1	
		Any tax paid in excess refunded	0·5	
		May claim expenses	1	
		Will need to pay further tax in Malta, with justification	1	
			7·5	7
				20

			Available	Maximum
4	(a)	**Construction and rental of the offices**		
		General rule on letting of immovable property	0·5	
		Where by limited liability company	0·5	
		To a person registered under Article 10	0·5	
		For purpose of economic activity	0·5	
		VATable at 18%	0·5	
		To register under Article 10	1	
		To claim input credit for VAT incurred	0·5	
		To charge VAT at 18%	0·5	
		Change of use		
		Changes the nature of the supply	0·5	
		No licence under Malta Travel and Tourism Services Act	0·5	
		Exempt without credit supply	0·5	
		Capital goods scheme for immovable property and furniture	1	
		Adjustment to be made	1	
		Immovable property 1/20	0·5	
		Furniture 1/5	0·5	
		Adjustment once and for whole period of adjustment	1	
		Immovable property 14/20	1	
		Calculation of adjustment €8,820	1	
		No adjustment for furniture	0·5	
			12·5	12
	(b)	**Registration**		
		Banking services generally exempt without credit	0·5	
		Exemption applicable to credit institutions and insurance companies	0·5	
		Provides banking services to customers established outside EU	0·5	
		Entitled to credit of input tax as per partial attribution	1	
		May register for VAT	1	
		Right to claim credit on refurbishment		
		Claim 60% of input tax on offices	0·5	
		Calculation of VAT which may be claimed	0·5	
		Change in customer base		
		No adjustments for capital goods scheme until 2015	0·5	
		Immovable property 1/20	0·5	
		Adjustment on percentage increase of EU business	0·5	
		2015 adjustment in favour of Malta Bank Ltd	0·5	
		Calculation for 2015	0·5	
		2016 adjustment in favour of VAT authority	0·5	
		Calculation for 2016	0·5	8
				20

				Available	Maximum
5	(a)	(i)	**Lease of ferry boat**		
			Resident in Malta	1	
			Basis of taxation	0·5	
			Taxable in Malta on lease payments	1	
			In terms of Treaty only taxable in Malta	1	
			Can claim exemption from 15% rate in Turkey	1	
			May deduct all expenses wholly and exclusively incurred in the production of the income	0·5	
			Can also claim wear and tear deductions	0·5	
			Sale of ferry boat		
			Gain only taxable in Malta	1	
			No tax in Malta	0·5	
			Gain derived from transfer of vessel	1	
			Balancing charge or balancing allowance	0·5	
			When capital allowances claimed and asset sold	0·5	
			And transfer occurs before source of income ceases to exist	0·5	
			Prepare balancing statement	0·5	
			Balancing statement will result in loss or gain	0·5	
			Balancing allowance description	0·5	
			Balancing charge description	0·5	
			Replacement ferry purchased within 12 months	1	
			Election for rollover against cost of replacement	1	
			In writing to Commissioner	0·5	
			Less capital allowances for new ferry	0·5	
				14·5	14
		(ii)	Written down value	0·5	
			Balancing charge	0·5	
			Rollover	0·5	
			Base cost	0·5	2
	(b)		Collective investment schemes	0·5	
			Persons holding an investment services licence	0·5	
			Whose activities comprise the provision of management, administration, safekeeping or investment advice to collective investment schemes	0·5	
			Companies 50% or more of whose shareholders are not directly/indirectly resident in Malta	0·5	
			Having the majority of its business interests outside Malta	0·5	
			Retirement schemes whose beneficiaries are non-resident individuals	0·5	
			Or companies having 90% of their business interests outside Malta	0·5	
			Holding of shares in (iii) or (iv) constitutes business interest outside Malta	0·5	4
					20