Answers

1

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Dear Sanja and Maja

Further to our recent discussions, please find below our comments on the issues raised.

(a) Income tax consequences arising on the sale of the Hal Far factory by Canned Fruits Ltd (CF)

Transfers of immovable property situated in Malta are by default subject to a final property transfer tax of 8% on the transfer value of the property (i.e. the higher of the market value and consideration). However, the Income Tax Act (ITA) provides that a transfer of property may be excluded from the 8% final tax system if:

– the property has been used in a business for a period of at least three years;

– it is replaced within one year by another property;

– the new property is used solely for a similar purpose;

– the transferor elects to be excluded from the system by means of a declaration made to the notary at the time of the publication of the deed of transfer, and the declaration is recorded in the deed.

If the election is made, the transfer would not be regulated by the property transfer tax regime. However, there will be a capital gain realised on the transfer, but this gain is not taxed at that time. The cost of the new asset acquired is reduced by the amount of the gain, thereby deferring the tax charge on the disposal of the original property to the subsequent disposal of the replacement property, provided the replacement property is not then replaced within two years of its acquisition.

CF has held and used the Hal Far factory in the course of its business for more than three years, and the replacement factory will be acquired within one year of the disposal of the Hal Far factory. Accordingly, CF may opt to exclude the transfer of the Hal Far factory from the final tax system.

In this case, any capital gain realised on the sale of the Hal Far factory will not be taxed, and the cost of acquisition of the Mriehel factory will be reduced by the capital gain not brought to tax on the sale of the Hal Far factory.

The calculations of the capital gain and of the adjusted cost of acquisition of the Mriehel factory are provided in Appendix 1 to this letter.

(b) Value added tax (VAT) consequences arising on the sale of the Hal Far factory by CF

For VAT purposes, the acquisition and eventual disposal of the Hal Far factory by CF are both treated as an exempt without credit supply. Therefore on the purchase of the factory, CF was not charged any VAT, and on the disposal in December 2019, it will not charge any output VAT. However, CF was entitled to and claimed an 18% input VAT credit on the €100,000 refurbishment costs in 2017.

The capital goods scheme states that whenever a taxable person incurs capital expenditure, there is an obligation for the taxable person to ensure that the capital asset is used by the taxable person for taxable activities for a 20-year adjustment period. This adjustment period is deemed to commence when the asset is first put to use, which, in the case of CF's factory improvement, occurred during 2017. Should the capital good not be used for taxable activities for the full adjustment period, the input VAT credit initially claimed will be withdrawn (i.e. adjusted in favour of the VAT authorities).

The disposal of the Hal Far factory during 2019 means that the capital good will cease to exist within the framework of the enterprise. Since the sale of the factory is an exempt without credit supply, the capital good will not be subject to a supply for which VAT is deductible.

Accordingly, CF is required to make a full adjustment for the remaining years of the adjustment period. The premises were used for two years (2017 and 2018), and therefore CF should make an adjustment of 18 years out of 20 in favour of the Commissioner of VAT. Therefore, €16,200 (calculated using the equation below) of the initially claimed VAT of €18,000 should be repaid.

$$\frac{\text{Number of years not used for taxable supplies}}{\text{20 years}} \times \text{Initially claimed input VAT}$$

(c) Impact of the sale of the Hal Far factory on the investment tax credit claimed in January 2017

Where a company receives an investment tax credit on an eligible investment approved by Malta Enterprise, the beneficiary is required to keep the tangible asset for a minimum period of five years, reduced to three years in the case of small and medium sized enterprises. Since CF is a small undertaking for Malta Enterprise purposes, and it carried out the eligible investment through the extension of its capacity during January 2017, it should retain the asset until 2020 to ensure it benefits from the

investment tax credit. Accordingly, should the Hal Far factory be disposed of during December 2019, CF would be required to file an adjustment form to cancel the previously claimed investment tax credit, potentially resulting in further tax, omission tax and interest becoming due for the applicable years of assessment.

However, if CF were to postpone the sale of the Hal Far factory by one month to January 2020 (and continue operating through the Hal Far factory), the factory disposal would not require any adjustment to the previously claimed investment tax credit.

(d) Income tax consequences arising on the possible disposal of the replacement Mriehel factory

Where a transferor opts, through the rollover relief provisions, to exclude a transfer of immovable property from the scope of Article 5A of the ITA (e.g. on the sale of the Hal Far factory), any future transfers of the replacement property (i.e. the Mriehel factory) are governed by the rollover capital gains provisions, provided the replacement property is held and used in the course of the business for a minimum period of two years.

However, if the replacement property is not held for the prescribed two-year period, the transfer of the replacement property is governed by the property transfer tax rules, rather than the capital gains rules. In addition, where the rollover relief was originally claimed, the ITA imposes a claw back of the property transfer tax which was not paid on the sale of the original property (i.e. the Hal Far factory).

The consequences of selling the Mriehel factory are explained below for each scenario:

(i) Sell the Mriehel factory in June 2020 for €1,000,000 without replacement

Should CF dispose of the Mriehel factory without replacement in June 2020 (within two years of acquisition), CF would be required to apply the property transfer tax regime, without any possible opt out. Since the sale is within five years of the date of acquisition, and does not form part of a project, the sale will be subject to a tax of €50,000 (i.e. 5% final tax on the transfer value of the property = 5% x €1,000,000).

Since the Hal Far factory was acquired after 1 January 2004, and the rollover relief was claimed, the claw back of property transfer tax not paid on the sale of the Hal Far factory will be €48,000 (i.e. 8% of the transfer value at the time of the rollover relief claim = 8% x €600,000).

(ii) Sell the Mriehel factory in June 2022 for €1,200,000 without replacement

Should CF dispose of the Mriehel factory without replacement in June 2022 (more than two years after acquisition), the anti-abuse provision provided for in the property transfer tax provisions would not be triggered and the transfer of the Mriehel factory would be taxable under the capital gains rules.

The capital gain which was deferred on the sale of the Hal Far factory would become chargeable through the lower cost of acquisition attributed to the Mriehel factory (i.e. €729,994 (Appendix 1) rather than €800,000). This will result in tax on the capital gain of €104,855 (Appendix 2). Under this scenario, there will be no further property transfer tax imposed on the previous sale of the Hal Far factory.

(iii) Sell the Mriehel factory in June 2024 for €1,800,000 and within six months acquire a smaller factory for €500,000

Should CF dispose of the Mriehel factory in June 2024 (more than two years after acquisition) to replace it with a smaller factory, the anti-abuse provisions would not be triggered and the transfer would be taxable under the capital gains rules. Moreover, since the replacement factory in Mriehel would have been used in the course of its business for at least three years and is within one year being replaced by a factory to be used for the same purpose, rollover relief may be claimed again on the sale of the Mriehel factory.

However, as the capital gain on the sale of the Mriehel factory will exceed the cost of acquisition of the replacement smaller factory, some of the gain will be chargeable (see Appendix 3). Accordingly, the cost of acquisition of the smaller factory will be reduced to zero and a gain of €308,825 is taxed immediately at the rate of 35%.

(e) Tax consequences arising on the disposal of shares in CF

The Income Tax Act provides for an exemption from tax on capital gains derived by non-residents upon the disposal of shares in a Maltese company, provided the company is not a property company. Although you are both non-residents, the exemption will not be available as CF will be deemed a property company. This is because CF owns immovable property situated in Malta, and despite the property being a factory used in the course of CF's business, the value of CF's assets attributable to the immovable property situated in Malta exceeds 50% of the total value of its assets.

Whenever a company claims the rollover relief on a transfer of an immovable property, the company is required to use the replacement property in the course of its business for a minimum period of two years, in order not to fall foul of the anti-abuse provisions. However, a transfer of shares will not trigger these provisions as long as the replacement property is utilised by the company to carry out the same business for the minimum two years prescribed by the property transfer tax rules.

We hope that this answers your immediate queries with respect to the property transfers and the replacement thereof.

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

Yours faithfully

Tax consultant

APPENDIX

1. **Capital gain computation on the sale of the Hal Far factory**

	€	€
Selling price (5 December 2019)		600,000
Cost of original acquisition (1 June 2014)	400,000	
Maintenance allowance (400,000 x 0·4% x 5)	8,000	
Inflation allowance		
400,000 x (859·63 – 821·34)/821·34	18,648	
		(426,648)
Cost of improvement (January 2017)	100,000	
Maintenance allowance (100,000 x 0·4% x 2)	800	
Inflation allowance		
100,000 x (859·63 – 838·29)/838·29	2,546	
		(103,346)
Capital gain (not taxed)		70,006
Mriehel factory cost of acquisition (5 December 2019)		800,000
Less: untaxed capital gain on Hal Far factory		(70,006)
Reduced cost of acquisition		729,994

2. **Sale of Mriehel factory for €1,200,000, without replacement**

Capital gain computation on the sale of the Mriehel factory

	€	€
Selling price (June 2022)		1,200,000
Cost of acquisition (5 December 2019 – Appendix 1)	729,994	
Maintenance allowance (729,994 x 0·4% x 3)	8,760	
Inflation allowance		
729,994 x (1,050 – 859·63)/859·63	161,661	
		(900,415)
Capital gain		299,585
Tax at 35%		104,855

3. **Sale of Mriehel factory for €1,800,000, and within six months acquire a smaller factory for €500,000**

Capital gain computation on the sale of the Mriehel factory

	€	€
Selling price (June 2024)		1,800,000
Cost of acquisition (5 December 2019 – Appendix 1)	729,994	
Maintenance allowance (729,994 x 0·4% x 5)	14,600	
Inflation allowance		
729,994 x (1,150 – 859·63)/859·63	246,581	
		(991,175)
Capital gain		808,825
Small factory cost of acquisition		500,000
Capital gain on Mriehel factory		(808,825)
Remaining capital gain to be taxed		308,825
Tax at 35%		108,089

2 (a) Maltese income tax treatment of the income derived by Malta Limited (MLT)

(i) Profits from the company's trading activities

MLT is a company domiciled and resident in Malta by virtue of its incorporation, and therefore taxable in Malta on its worldwide profits. The company derives income from internet marketing services which is considered to be trading income. Since the trading income is not considered to be attributable to a permanent establishment situated outside Malta, the permanent establishment exemption will not be available. Although the income stands to be allocated to the Maltese taxed account (MTA), MLT would still be able to claim treaty or unilateral double tax relief as long as it has

evidence of the foreign source tax paid. Since MLT does not have such proof and the income is allocated to the MTA, the company will not be able to claim double tax relief by way of the flat rate foreign tax credit.

Therefore MLT will be required to pay tax in Malta on its MTA trading profit at a tax rate of 35%. The company will also be required to carry out a secondary allocation from its MTA to its immovable property account (IPA) (amounting to €250 per m^2).

A distribution of profits from the MTA after such reallocation would entitle Michael Eriksen to a 6/7ths tax refund. The total amount of tax paid in Malta after the refund would thus be 5% of that part of the company's profits which is not allocated to the final tax account (FTA) and the IPA.

(ii) Dividend income received from Sweden Limited (SWL)

In December 2019, MLT is expected to receive a dividend from its 100% owned (assuming Michael Eriksen's shareholding is restructured as planned) Swedish subsidiary. In order to claim the participation exemption on the dividend income derived, the investment must be both an equity shareholding and a participating shareholding.

An investment is considered to be an equity shareholding if it entitles the investor to at least two of the following rights:

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

From the information supplied, as a minimum, the first two rights are met in SWL's case, and therefore it is considered to be an equity shareholding. MLT's shareholding in SWL will qualify as a participating holding if it satisfies at least one of the following conditions:

- it entitles MLT to at least 5% of any two of the equity holding rights; or
- its market value at the date of acquisition was at least €1·164 million and the shares were held uninterruptedly for at least 183 days prior to the dividend distribution; or
- it confers a level of control, such as the ability to appoint a director, or the right to acquire the balance of other investees' equity shares; or
- it is held to further the Maltese investor's business and not held as a trading stock.

In addition, 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.

Since MLT's shareholding in SWL satisfies both the participating holding definition and the anti-abuse provision, MLT will be able to claim a full participation exemption on the dividend income, allocating the income to the FTA.

In this case, Malta will not impose any withholding or any other type of tax on the payment of dividends from the FTA to Michael Eriksen.

An alternative option would be for MLT to include the dividend income in its chargeable income allocated to the foreign income account (FIA) and tax such income at 35%.

In this case, a distribution of these profits to Michael Eriksen by way of a dividend entitles him to a full refund of the tax paid by the company.

(b) Withholding tax on interest payments in terms of the EU Interest and Royalties Directive (the Directive)

In terms of the double tax treaty with Malta, Sweden imposes a 10% withholding tax rate on the interest payments made by SWL to MLT. However, given that Sweden and Malta are both EU Member States, they are bound by the provisions of the Directive, which provides that interest payments are free of any withholding tax if the conditions of the Directive are satisfied. In order to apply the Directive, MLT and SWL must:

(i) Satisfy the definition of a company in their respective EU Member State and as defined in the Directive; and

(ii) The two companies must be associated companies, that is:

- either one company holds 25% or more of the capital of the other, or
- both companies are directly held at least 25% by the same company, also incorporated in the EU.

Prior to the restructuring exercise, the second condition above is not deemed to be satisfied, since MLT only owns 5% of SWL and there are no shares in the two companies which are owned by a third company which is resident in the EU. However, post-restructuring, MLT's shareholding in SWL will satisfy the conditions of the Directive and therefore Sweden will no longer be able to impose any withholding tax on the interest payment between the two companies.

(c) Withholding tax on dividend payments in terms of the EU Parent-Subsidiary Directive (PSD)

Since Malta and Sweden are EU Member States, the provisions of the PSD must be applied with respect to the dividend distribution.

The PSD provides that:

– any dividend distributions are free of any withholding tax, and
– the country of the recipient is required to:
  – exempt from tax the dividends received, or
  – grant an underlying tax credit for the tax paid in the source country.

In order to apply the PSD, MLT and SWL must:

(i) satisfy the definition of a company in the PSD, and MLT must hold at least 10% of SWL's capital; and

(ii) be tax resident in their respective EU Member State; and

(iii) be subject to a tax which is listed in the Annex of the Directive, 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, post-restructuring, since MLT's shareholding in SWL will have increased from 5% to 100% (and therefore will be at least 10%), Sweden will be required to exempt the dividend payment to MLT from any withholding tax.

(d) Availability of the notional interest deduction (NID) rules

The NID rules provide for a deduction from chargeable income of a notional interest on risk capital, subject to limitations. For the purpose of the rules, risk capital includes share capital of a company.

Although the increase in share capital carried out during the restructuring exercise would, under normal circumstances, lead to a higher annual NID, in the case of MLT, no deduction for NID may be claimed. This is because the increased share capital will be employed by the company to produce income (the dividend income qualifying for the participation exemption) which is exempt from tax. In fact, any capital which is used to exclusively generate exempt income is excluded from the definition of risk capital in the NID rules.

3 (a) (i) Mobili Srl (Mobili) – place of supply rules and liability for Maltese value added tax (VAT) on the sale of furniture to Malta

Supply (1): Office furniture with transport but WITHOUT installation to a taxable person
For VAT purposes, a supply of goods with transport is deemed to take place where the goods are physically located when the transport begins. Therefore, under the general rules, the sale of furniture with transport by Mobili to Maltese customers is deemed to take place in Italy.

When the supply of goods with transport is made to a taxable person in another European Union Member State (EUMS), this is treated as a zero rated supply in the EUMS of dispatch (i.e. Italy).

However, from the perspective of the taxable person in the acquirer EUMS (i.e. Accountancy Ltd), the intra-community acquisition is a taxable supply in the EUMS where the goods are located when the transport of the goods to the person acquiring them ends (i.e. Malta).

Moreover, the liability for the payment of VAT on a taxable supply made by Mobili (as a person which is not established in Malta and which is not registered under Article 10 of the VAT Act) to a person established in Malta and registered for VAT in terms of Article 10 of the VAT Act is shifted to the Maltese taxable person to which the supply is made (i.e. Accountancy Ltd).

Supply (2): Office furniture with transport and installation to a taxable person
The place of supply of goods with installation does not follow the general place of supply rules and is deemed to take place where the goods are installed or assembled. Therefore the supply of the furniture with assembly by Mobili would be deemed to take place in Malta. However, even in this case, Mobili will be able to shift the liability to account for and pay VAT onto the Maltese taxable person registered for VAT purposes in terms of Article 10 (i.e. Architects Ltd).

Supply (3): Bedroom furniture with transport but WITHOUT installation to a non-taxable person
Similar to supply (1) above, Mobili is deemed to have carried out a supply of goods with transport starting from Italy, leading to the place of supply being deemed to be in Italy. In this case, Mobili will be unable to shift the liability to account for and pay VAT onto the customers since the customers (i.e. Chris and Martina) are not registered for VAT purposes in Malta. Therefore, the company will be required to impose Italian VAT on the supply and will not be required to obtain a VAT registration in Malta.

Supply (4): Bedroom furniture with transport and installation to a non-taxable person
The supply of goods with installation by Mobili to a non-taxable person in Malta (i.e. Mark) would be deemed to take place in Malta where the assembly occurs. Since Mark is not a taxable person in Malta, Mobili will be required to obtain a Maltese VAT number and charge Maltese VAT on the supply being carried out.

(ii) Joiners Ltd – place of supply rules and liability for Maltese VAT on the assembly of furniture in Malta

For VAT purposes, furniture assembly is considered to be work on movable property (a taxable service). Under the business to business (B2B) rules, such services are deemed to take place where the customer is established when the customer is a taxable person. Therefore the assembly services provided to Mobili, as an Italian taxable person, are deemed to take place in Italy and Joiners Ltd will invoice Mobili under the reverse charge mechanism without any Maltese VAT.

When Joiners Ltd provides assembly services directly to taxable persons in Malta, the place of supply is in Malta and Joiners Ltd would be required to charge Maltese VAT on the services rendered.

The place of supply of assembly services when provided directly to non-taxable persons is the place where the work is physically carried out, in this case Malta. Therefore when providing assembly services physically in Malta to the customers of Mobili (i.e. non-taxable persons), Maltese VAT must be charged.

(b) Pretty & Cool Ltd (P&C) – place of supply and liability for Maltese VAT on supply of digital marketing services

P&C carries out four different supplies of digital marketing services, which for VAT purposes are all considered to be taxable supplies. However, the country where VAT is to be accounted for and paid will depend on the place of supply rules as follows:

Supplies of marketing services to taxable persons
Supplies of marketing services to both taxable persons established in the EU and outside the EU are deemed to take place where the customer is established, under the general B2B place of supply rule. Therefore P&C will not be required to charge Maltese VAT on its supplies to taxable persons established outside Malta. It will shift the liability to account for and pay VAT onto the taxable customer.

Supplies of marketing services to non-taxable persons established in the EU
Supplies of marketing services to non-taxable persons established in the EU are deemed to take place where the supplier is established, under the general business to non-taxable person (B2C) place of supply rule. Therefore, P&C will be required to charge Maltese VAT on these services.

Supplies of marketing services to non-taxable persons established outside the EU
On the other hand, supplies of marketing services to non-taxable persons established outside the EU do not fall within the parameters of the general B2C place of supply rule. As an exception to the general rule, such supplies are deemed to take place where the customer is established. Therefore P&C will not be required to charge any VAT on its supplies of marketing services to persons established outside the EU.

4 (a) Gianni Baggio (Gianni)'s tax status and Malta and Italy's right to tax

Prior to his employment with BLGM, Gianni was neither resident nor domiciled in Malta. Upon taking the employment with BLGM, Gianni changed his country of tax residence from Italy to Malta, however, he did not acquire Maltese domicile since he expects to move to Indonesia later on in his life. Accordingly, as a non-domiciled tax resident individual, Malta will tax him on a remittance basis. He will therefore be taxed on Malta source income and foreign source income only if remitted to Malta, but not on foreign source capital gains.

With effect from 2019, the Italian tax authorities will not consider Gianni as an Italian tax resident but he will be tax resident in Malta. Accordingly, under the terms of the tax treaty based on the OECD Model Convention, Italy will be unable to tax his Malta source employment income since Italy will be neither the source state nor the residence state with respect to his salary. On the other hand, the Italian source rental income can be taxed in Italy without any capping on the maximum tax rate. As Gianni remits his foreign source income to Malta, the rental income will also be taxed in Malta as long as Malta grants a credit for the tax suffered in Italy. Finally, in terms of the tax treaty, the Italian source pension income is taxable exclusively in Malta since the treaty grants exclusive rights to the residence state to tax pension income.

(b) The options granted by Maltese tax law in respect of the employment, pension and rental income

During 2019, Gianni will be taxable in Malta on his employment income and the foreign rental income remitted to Malta at the single tax rates. However, Gianni may be able to benefit from a reduced 15% flat tax rate on his employment income paid to him by BLGM (but without entitlement to any deductions, double tax relief or set off of any kind), if all the conditions in the highly qualified persons rules (HQPR) are satisfied. In particular, Gianni is required to prove to the satisfaction of the Malta Financial Services Authority (MFSA) that:

– he holds an eligible office,
– with a company licensed by the MFSA,
– under a qualifying contract,
– with a salary of at least €75,000 as adjusted annually in line with the retail price index.

Gianni appears to satisfy these conditions, since he is employed as the chief financial officer (an eligible office), his employment will be with an MFSA-licensed company, and his salary is €120,000 which exceeds the prescribed minimum and should also suffice to demonstrate that he is in receipt of stable and regular resources which are sufficient to maintain him and his family without recourse to the Maltese social assistance system.

The other conditions which Gianni will need to satisfy are:

– he has the necessary qualifications and experience;
– his contract of employment is regulated by Maltese law;
– he has adequate accommodation;
– he does not benefit from the exemption on certain fringe benefits available to investment services expatriates;
– he is covered by a sickness insurance policy;
– he is not domiciled in Malta; and
– he is in possession of a valid travel document.

As an EU national, he would be able to benefit from the HQPR scheme for an initial period of five years, although he is expected to benefit from the scheme for only one year due to his impending retirement.

Should Gianni opt for the HQPR, the tax due for 2019 would amount to €18,000 (€120,000 x 15%) on his salary. Alternatively, should he opt to be taxed at the progressive tax rates, the tax due on his salary would be €33,275 ((€120,000 x 35%) less €8,725).

In addition, should Gianni opt to tax the foreign rental income under the 15% final tax option (without any double tax relief claim) he would pay tax of €1,500 (€10,000 x 15%). Alternatively, if he were to opt to tax the Italian rental income at the progressive tax rates, this income would be taxed at 35% and would be entitled to a maximum double tax relief of 10% thereby resulting in a minimum of 25% effective tax.

Tutorial note: *The effective tax rate would also be higher if the additional 20% additional allowable deduction expense were to be availed of.*

Accordingly, Gianni should opt for both the HQPR and the 15% final tax on rental income for 2019. If Gianni does so, the total tax due in 2019 would be €19,500 (W1).

On retirement, Gianni's only income will be his pension and Italian rental income. Although by default he will be taxed on foreign source income remitted to Malta at the (single) progressive tax rates, Gianni may also decide to opt for the Malta retirement programme rules (MRP). The MRP is available as long as Gianni does not simultaneously benefit from the HQPR (although he may be a past beneficiary), and in addition to satisfying the HQPR conditions in 2019 satisfies the following additional conditions in 2020:

– He resides in a qualifying property, if owned, which was acquired for €275,000 (€220,000 if the property is situated in Gozo or in the south of Malta), or a property rented for €9,600 (€8,750 if the property is situated in Gozo or in the south of Malta) per annum.
– He is neither a Maltese nor a third country national.
– He is in receipt of a pension, all of which is received in Malta, and constitutes at least 75% of his chargeable income. For Gianni this condition would be met since his annual pension income will account for €50,000 out of a total income of €60,000 (including the rent).

Should Gianni opt for the MRP, all foreign source income would be taxed at a flat rate of 15% with the possibility of claiming a credit for double tax relief. Therefore Gianni would be liable to total tax of €8,000 (W2) which exceeds the minimum annual tax due of €7,500 in terms of the MRP. Therefore, Gianni is better off taxing the foreign source rental income under the MRP (i.e. outside the scope of the final tax system) so as to be able to claim a credit for the 10% tax withheld by Italy. Should he decide not to opt for the MRP, he will be liable to a tax of €11,275 (W3) at progressive rates after deducting the credit for double tax relief.

Workings

W1 Tax due for 2019 if Gianni opts for the HQPR and the 15% final tax on rental income

	€
Tax on salary (€120,000 x 15%)	18,000
15% final tax on rental income	1,500
Total	19,500

W2 Tax due on pension and rental income under the Malta retirement programme

	€
Tax on pension (€50,000 x 15%)	7,500
15% tax on rental income (€10,000 x 15%)	1,500
Double tax relief (€10,000 x 10%)	(1,000)
Total	8,000

W3 Tax due on pension and rental income at progressive rates

	€
Tax at progressive rates (€60,000 x 25%) less €2,725	12,275
10% double tax relief on Italian rental income (€10,000 x 10%)	(1,000)
Total	11,275

			Available	*Maximum*
1	**(a)**	**Income tax consequences arising on the sale of the Hal Far factory by Canned Fruits Ltd (CF)**		
		Default 8% final tax	0·5	
		Roll over conditions:		
		Used in business for three years, used for same purpose and replaced within one year	3·0	
		Regulated by Art 5 not Art 5A but tax on capital gain deferred	1·0	
		Capital gains computation:		
		Maintenance allowance calculation on original cost and improvements	1·0	
		Inflation allowance calculation on original cost and improvements	1·5	
		Reduced cost of acquisition for the Mriehel factory	1·0	
			8·0	7
	(b)	**Value added tax (VAT) consequences arising on the sale of the Hal Far factory by CF**		
		Transfers of immovable property exempt without credit	0·5	
		Right to claim input VAT on improvements	0·5	
		Recognise that disposal triggers the capital goods scheme	0·5	
		Capital goods scheme explanation with 20 years adjustment period	2·0	
		Calculation of adjustment in favour of tax authorities	1·0	
			4·5	4
	(c)	**Impact of Hal Far factory transfer on the claimed investment tax credit**		
		Required to keep the tangible asset in the undertaking for a minimum period of five years, reduced to three years in the case of small and medium sized enterprises	1·0	
		Transfer happening within three years therefore penalties and interest may be incurred	1·0	
		Deferral of transfer to January 2020 would avoid adjustment	1·0	
				3
	(d)	**Income tax consequences arising on the disposal of replacement factory**		
		The opt out through the rollover relief provisions excludes the immovable property transfer from the scope of Article 5A of the ITA	1·0	
		Future transfers of the replacement property governed by the rollover capital gains provisions, as long as the replacement property is held and used in the course of the business for a minimum period of two years	1·5	
		(i) Sell the Mriehel factory, in June 2020 for €1,000,000 without replacement		
		Within two years triggering the rollover relief anti-abuse provisions	0·5	
		Transfer is happening within five years and does not form part of a project, the transfer will be subject to a 5% final tax on the transfer value of the property	1·0	
		€50,000 property transfer tax due	0·5	
		Claw back on Hal Far factory, taxed at 8% of transfer value	1·0	
		(ii) Sell the Mriehel factory, in June 2022 for €1,200,000 without replacement		
		After more than two years, anti-abuse provisions not triggered and taxed under Art. 5	1·0	
		Capital gain which was not taxed on the transfer of the Hal Far factory would now be clawed back through a lower cost of acquisition	1·0	
		No further tax on sale of Hal Far factory	0·5	
		Calculation of the tax due	2·0	
		(iii) Sell the Mriehel factory, in June 2024 for €1,800,000 and within six months acquire a smaller factory for €500,000		
		Since the Mriehel factory (replacement property) is used in the course of business for at least three years and is within one year replaced by a factory to be used for the same purpose, the rollover may again be claimed on the sale of the Mriehel factory	1·5	
		The capital gain on the sale of the Mriehel factory exceeds the cost of acquisition of the smaller factory, the cost of acquisition of the smaller factory reduced to zero with the balance, being brought to tax immediately at the rate of 35%	1·5	
		Calculation of the tax due	2·5	
			15·5	13

		Available	*Maximum*
(e)	**Income tax consequences arising on the disposal of shares in CF**		
	Exemption from tax on capital gains derived by non-residents upon the disposal of shares in a Maltese company, as long as the company is not a property company. Although CF's shareholders are non-residents, the exemption is not available because CF owns immovable property situated in Malta, and although the property is used in the course of CF's business and is a factory, the value of CF's assets attributable to the immovable property situated in Malta exceeds 50% of the total value of its assets	2·5	
	As long as Mriehel factory is used for the same purposes, a change in shareholding does not trigger any anti-abuse provisions or claw backs	1·5	4

	Available	Maximum
Presentation:		
Appropriate format of letter	1·0	
Logical development	1·0	
Effectiveness of communication	2·0	4
		35

			Available	Maximum
2	(a)	**Maltese income tax treatment of the profits generated by Malta Limited (MTL) from the company's trading activities and the dividend income**		
		MTL is a company domiciled and resident in Malta by virtue of its incorporation, and therefore taxable in Malta on its worldwide profits	0·5	
		Trading income not attributable to a permanent establishment outside Malta, therefore allocate to Maltese taxed account	1·0	
		Require evidence of foreign tax to claim double tax relief. Flat rate foreign tax credit not available on MTA income	1·0	
		Secondary allocation to immovable property account for the annual market rent €250/m^2. A distribution of profits from the MTA would entitle Michael Eriksen to a 6/7ths tax refund – 5% effective tax	1·0	
		Equity shareholding, two out of three: votes, profits and assets on winding up	1·5	
		Participating shareholding conditions:		
		– it entitles MTL to at least 5% of any two of the equity holding rights; or	0·5	
		– its market value at the date of acquisition was at least €1·164 million and the shares were held uninterruptedly for at least 183 days prior to the dividend distribution; or	1·0	
		– it confers a level of control, such as the ability to appoint a director, or the right to acquire the balance of other investees' equity shares; or	1·0	
		– it is held to further the Maltese investor's business and not held as a trading stock	0·5	
		Anti-abuse conditions: in the EU, subject to a foreign tax of 15%, does not derive more than 50% of its income from passive interest and royalties	1·5	
		Conditions satisfied – FTA allocation	1·0	
		No withholding tax on dividends paid to non-residents	0·5	
		Option for MLT to pay tax at 35% and right to full refund upon a dividend distribution thereof from the foreign income account	1·0	
			12·0	10
	(b)	**Withholding tax on interest in terms of the EU Interest and Royalties Directive (the Directive)**		
		Given that Sweden and Malta are EU Member States, bound by the provisions of the Directive obligatory	1·0	
		Interest payments free of any withholding tax if the conditions are satisfied	0·5	
		Satisfy the definition of a company in their respective EU Member State and as defined in the Directive	1·0	
		The two companies must be associated companies, that is, either one company holds 25% or more of the capital of the other or both companies are directly held as to at least 25% by the same company, also incorporated in the EU	2·0	
		Before restructuring, conditions not satisfied, since MTL and SWL are not owned to extent of 25% by a company incorporated in the EU	1·0	
		However, post-restructuring, MTL's shareholding in SWL will satisfy the conditions of the Directive and therefore Sweden will no longer be able to impose any withholding tax on the interest payment between the two companies	1·0	
			6·5	6
	(c)	**Withholding tax on dividends in terms of the EU Parent-Subsidiary Directive (PSD)**		
		Given that Sweden and Malta are EU Member States, bound by the provisions of the PSD obligatory	1·0	
		Dividends distributions free of any withholding tax and the country of the recipient is required to exempt from tax the dividends received or grant an underlying tax credit for the tax paid in the source country, if conditions satisfied	1·5	
		(i) satisfy the definition of a company in the PSD and MTL must hold at least 10% of SWL's capital; and	1·0	
		(ii) be tax resident in their respective EU Member State; and	1·0	
		(iii) be subject to a tax which is listed in the Annex of the Directive, without the possibility of an option of being exempt or subject to any other tax which may be substituted for any of these taxes	1·5	
		Post-restructuring, Sweden will be required to exempt the dividend payment to MTL from any withholding tax	1·0	
			7·0	6

		Available	Maximum
(d)	**Availability of the Notional Interest Deduction Rules**		
	Risk capital definition – it included share capital of a company	1·0	
	No deduction for NID may be claimed since the increased share capital will be employed by the company to produce income (the dividend income qualifying for the participation exemption) which is exempt from tax	2·0	3
			25

		Available	Maximum
3 (a) (i)	**Mobili Srl (Mobili) – place of supply rules and liability for Maltese value added tax (VAT) on the sale of furniture to Malta**		
(1)	A supply of goods with transport is for VAT purposes deemed to take place where the goods are when the transport begins (general rule) – Italy	1·5	
	When the supply of goods with transport is made to a taxable person in other EU Member State (intra-community supply and intra-community acquisition) place of supply shifted to the place where the goods are when the transport of the goods to the person acquiring them ends (i.e. Accountancy Ltd)	2·0	
	Liability for the payment of VAT on a taxable supply made by Mobili (as a person which is not established in Malta and which is not registered under Article 10 of the VAT Act) to a person established in Malta and registered for VAT in terms of Article 10 of the VAT Act is shifted to the person to which the supply is made (i.e. Accountancy Ltd)	1·5	
(2)	Place of supply of goods with installation is where the goods are installed or assembled, which is Malta in this case	1·5	
	Mobili will be able to shift the liability to account for and pay VAT onto the Maltese taxable person (i.e. Architects Ltd) registered for VAT purposes in terms of Article 10	1·5	
(3)	General place of supply of goods rules (with transport) – Italy	2·0	
	Unable to shift the liability to account for and pay VAT on to the customers since the customers (i.e. Chris and Martina) are not registered for VAT purposes in Malta. Therefore, Mobili will be required to impose Italian VAT on the supply and will not be required to obtain a VAT registration in Malta		
(4)	Supply deemed to take place in Malta where the installation occurs. Since the customer (Mark) is not a taxable person in Malta, Mobili will be required to obtain a Maltese VAT number and charge Maltese VAT on the supply being carried out	2·0	
		12·0	11
(ii)	**Joiners Ltd – place of supply rules and liability for Maltese VAT on the assembly of furniture in Malta**		
	General business to business services place of supply rules applies and therefore apply reverse charge mechanism with the supply to Mobili deemed to take place in Italy where the customer as a taxable person is established	1·0	
	Supplies to Maltese taxable subject to Maltese VAT (general rule with taxable person (customer) established in Malta	1·0	
	Supplies to Maltese non-taxable persons subject to Maltese VAT where the assembly is physically carried out	1·0	3
(b)	**Pretty & Cool Ltd (P&C) – place of supply and liability for Maltese VAT on supply of digital marketing services**		
	Supplies of marketing services to both taxable persons established in the EU and outside the EU deemed to take place where the customer as a taxable person is established (general B2B place of supply rule). Therefore P&C will shift the liability to account for and pay VAT onto the taxable customer and will not be required to charge Maltese VAT on its supplies to taxable persons established outside Malta	2·5	
	Supplies of marketing services to non-taxable persons established in the EU are deemed to take place where the supplier is established, in terms of the general B2C place of supply rule. P&C will be required to charge Maltese VAT on these services	2·0	
	Supplies of marketing services to non-taxable persons established outside the EU do not fall within the parameters of the general B2C place of supply rule – deemed to take place where the customer is established. Therefore P&C will not be required to impose any VAT on its supplies of marketing services to persons established outside the EU	2·0	
		6·5	6
			20

			Available	Maximum
4	**(a)**	**Advice on Malta's and Italy's respective rights to tax Gianni Baggio's employment income, rental income and pension income**		
		Taxable on a remittance basis with explanation	1·5	
		Italy unable to tax salary as it is neither the source nor the residence country	1·0	
		Italy can tax (unlimited) the rental income. Malta can tax but must grant double tax relief	1·5	
		Pension income taxable only in the residence state (Malta)	1·0	5
	(b)	**Options granted by Maltese tax law in respect of the employment, pension and rental income**		
		Taxable at single rates	0·5	
		Option for the highly qualified programme rule (HQPR) to tax employment income with 15% flat tax rate without any deduction or credit	1·0	
		HQPR conditions (x maximum of 6, 1 mark each)	6·0	
		HQPR available for five years	0·5	
		Calculation of tax due using progressive tax rates	0·5	
		Calculation of tax due using HQPR plus 15% final tax as better option to tax foreign source rental income for 2019	2·0	
		Option for the Malta retirement programme (MRP) – 15% tax with pension to constitute at least 75% of his annual income (condition satisfied)	1·0	
		Prior HQPR does not disqualify him from MRP	0·5	
		Other conditions for MRP (3 x 1 mark each)	3·0	
		Calculation of tax due using progressive tax rates	0·5	
		Calculation of tax at 15% tax plus rental income also taxed under MRP so as to claim double tax credit	1·5	
			17·0	15
				20