Answers

1

Tax Consultant
100, Siege Road
Mdina

Ms Aino Pennanen
Aurora Road
Helsinki
Finland

Dear Ms Pennanen,

Following our discussions, we hereunder provide you with our comments on the Maltese income tax treatment of the income arising from Valletta Meats Limited's (VML) trading activities, and its interest and dividend income and with respect to the impact of the interest deduction limitations on the chargeable income expected to be derived by VML for year of assessment 2021.

(a) Maltese tax treatment of the trading income, interest and dividend income derived by VML

VML is a company incorporated, managed and controlled in Malta, and so is deemed to be both resident and domiciled in Malta. As such, it is taxable in Malta on a worldwide basis.

VML's trading income derived from the meat import and distribution business is taxable in Malta at the standard corporate tax rate of 35% and is to be allocated to the Maltese taxed account (MTA) since the income is not attributable to any permanent establishment situated outside Malta. However, since the company owns and uses warehouses in Malta, it must make a secondary allocation from its MTA to its immovable property account (IPA), amounting to €250/m^2, in this case €2 million (8,000m^2 x €250/m^2). In view of the level of VML's chargeable income for 2020, the company should be in a position to carry out the secondary allocation in full without the need to carry forward any shortfall to a subsequent year of assessment.

A distribution of profits from VML's MTA to yourself would entitle you to claim a 6/7ths refund of the tax paid by VML. You are not entitled to claim any tax refunds on dividend payments from VML's IPA.

The €2 million interest income derived from the loan granted to Finland Meats Limited (FML) is considered to be passive in nature since the granting of finance is not VML's main business and therefore this income will be allocated to the foreign income account (FIA). Moreover, since the interest income was not subject to any non-Malta tax of at least 5%, upon a distribution of dividend from VML's FIA, you would be entitled to claim only a 5/7ths rather than a 6/7ths tax refund, resulting in an effective tax cost of 10% (35% less 5/7ths of 35%).

Alternatively, if VML claims double taxation relief on the interest income by way of the flat rate foreign tax credit (FRFTC), VML would then pay an effective tax of only 18·75% on the interest income. You will then be able to claim a refund of 2/3 of the tax relating to the dividend distribution, giving you a net effective tax cost of 6·25%. This latter option is recommended due to the lower effective tax leakage.

With respect to the dividend received from FML, VML will be able to claim the participation exemption subject to satisfying all the conditions prescribed by the Income Tax Act as follows:

(i) VML's shareholding in FML should constitute an equity shareholding, that is, it must grant at least two out of the following three rights: rights to votes, rights to profits and rights to assets on winding up. All three requirements are satisfied in VML's case.

(ii) In addition, the shareholding must qualify as a participating holding. This condition is also satisfied since VML holds more than 5% of FML's rights to vote, to profits and to assets on winding up.

(iii) Finally, the investment in FML must satisfy the anti-abuse provisions, which requirement is also satisfied since FML is tax resident in the European Union.

Therefore, the dividend paid by FML will be exempt from tax in terms of the participation exemption and will be allocated to its untaxed account (UA).

(b) Impact of the interest limitation rule introduced by the Anti-Tax Avoidance Directive (ATAD) on VML's activities for year of assessment 2021

During year of assessment 2021, VML is required to limit the net interest deduction (referred to as the exceeding borrowing costs) to 30% of the earnings before interest, tax, depreciation and amortisation (EBITDA) for the year. For the purposes of the interest limitation rule, 'exceeding borrowing costs' are defined as the amount by which tax deductible borrowing costs (the interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance) exceed taxable interest revenues.

In the case of VML, this amounts to €75 million less €2 million (to be adjusted as discussed below).

The company's EBITDA is calculated by adding back to the income subject to tax, the tax-adjusted amounts for exceeding borrowing, depreciation and amortisation. Therefore, in calculating VML's EBITDA, the company must add back the depreciation and amortisation for the year without deducting the wear and tear allowance for the year and adjusting for any non-tax deductible expenses such as provisions. Moreover, the EBITDA must exclude any tax exempt income, meaning that the dividend received by VML from FML must be excluded from the EBITDA for the year.

The interest deduction limitation article allows a standalone entity to fully deduct its exceeding borrowing costs. However, VML cannot benefit from this provision because it has an associated enterprise (FML, since VML holds at least 25% of FML's share capital).

Should the exceeding borrowing costs be greater than 30% of EBITDA, the ATAD includes a relieving provision which allows VML a full deduction for its exceeding borrowing costs up to €3 million.

Moreover, in the calculation of the exceeding borrowing costs, VML may exclude borrowing costs incurred on loans which were concluded before 17 June 2016, but the exclusion shall not extend to any subsequent modification of such loans. Therefore, in the exceeding borrowings calculation, VML can exclude €12 million, representing the interest on the loan taken during 2015.

If the exceeding borrowing costs are in excess of 30% of EBITDA, such excess must be added back in the chargeable income computation, and is also carried forward (indefinitely) to be deducted in future years when the exceeding borrowing costs are lower than 30% of EBITDA. If, on the other hand, there is unused interest capacity (i.e. exceeding borrowing costs were lower than 30% of EBITDA, or €3 million as applicable), this can be carried forward and utilised for five years.

(c) Calculation of the expected add back to the chargeable income arising from the interest limitation rule

Calculation of EBITDA

	€millions
Net profit for the year	103
Less: Participation exemption dividend	(10)
Add back	
Unrealised exchange losses	26
Depreciation and amortisation	20
Chargeable income before wear and tear allowances and amortisation	139
Add back: Exceeding borrowing costs (W1)	61
EBITDA	200
Interest adjustment required	
30% of EBITDA	60
Exceeding borrowing costs	61
Disallowed interest	1

Working 1 – Exceeding borrowing cost calculation

	€millions
Interest cost	75
Interest income	(2)
Pre 17 June 2016 loans interest	(12)
Exceeding borrowing cost	61

(d) Calculation of VML's forecast chargeable income, tax charges, tax account allocations, and the potential tax refunds for Aino, for year of assessment 2021

Maltese taxed account

	€millions
Accounting profit from trading operations (103 – 2 – 10)	91
Adjustments	
Adjusted exceeding borrowing costs (as in part (c))	1
Unrealised exchange losses	26
Depreciation and amortisation	20
Wear and tear allowances and tax amortisation	(15)
Chargeable income	123
Tax at 35%	(43)
MTA primary allocation	80
Less: IPA secondary allocation (W2)	(2)
MTA	78

Working 2 – Immovable property account secondary allocation

8,000m^2 x €250/m^2	€2,000,000

Foreign income account

		€000s
Interest received		2,000
Add: FRFTC 25%		500
Chargeable income		2,500
Tax at 35%	875	
Less: FRFTC	(500)	
Tax due		(375)
FIA primary allocation		1,625

Untaxed account

	€millions
Participation exemption dividend	10

Immovable property account

	€millions
IPA secondary allocation (W2)	2

(e) Calculation of Aino's potential tax refund arising upon a dividend distribution from the MTA

MTA dividend

	€millions
Gross	120
Tax (35%)	(42)
Net	78
6/7ths tax refund	36

We hope that this answers your immediate queries with respect to VML's income receipts for 2020.

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

Yours sincerely

Tax consultant

2 (a) Advice on the Maltese tax treatment of the seven transactions in terms of the Income Tax Act

Transfers of immovable property situated in Malta are by default subject to a final 8% property transfer tax on the transfer value (the higher of consideration and market value at the date of the transfer). However, as illustrated below, a number of exceptions to the default rule apply.

Marsascala house

One of the exceptions to the general rule applies for disposals of immovable property which were acquired prior to 1 January 2004, where the property transfer tax rate increases to 10%. Therefore, the transfer of the Marsascala house would be subject to a final property transfer tax of €120,000 (10% of €1·2m).

Madliena villa

Transfers of immovable property acquired by way of inheritance are also subject to the final property transfer tax regime but are subject to different tax rates and/or computation methods.

In the case of property acquired *causa mortis* after 24 November 1992, the property transfer tax is computed at 12% on the difference between the sale value (€2m in the case of the Madliena villa) and the lower of value declared on the declaration *causa mortis* and the market value at the time of the declaration. Therefore, the disposal of the Madliena villa would result in a property transfer tax of €216,000 (12% of €2m less €200,000). However, following recent changes to the property transfer tax regime, Peter can opt to pay tax on the transfer under the default rule. This would result in a lower tax leakage of 8% of €2,000,000, that is €160,000.

The Valley project

Prior to 1 January 2015, on the first transfer of an immovable property forming part of a project which is situated in a special designated area (SDA), the transferor was granted the possibility to opt out of the final property transfer tax regime and be taxed on the profit arising on the project. When the transferor took such an option, future transfers of the immovable property within the project were deemed to be outside the scope of the property transfer tax regime and were taxed on the profits arising on the project. However, irrespective of any such opt out, all transfers within the SDA project happening as from 1 January 2015 (after a transitory period) are taxable under the property transfer tax rules. Therefore, on the sale of the remaining apartments, Peter would be required to pay €128,000 in property transfer tax (8% of €1,600,000).

Manikata house

The Income Tax Act provides for an exemption from tax on the transfer of a residential property which has been owned and occupied by the transferor for a minimum period of three consecutive years prior to the transfer and declared to be the transferor's only or main residence. The exemption is available as long as the transfer happens within one year from the vacation thereof. The exemption is also applicable to land sold/conveyed on the same deed with the principal residence, provided that the transferor owns such land for his own occupation and enjoyment as the residence's garden or grounds, consisting of an area which, regard being had to the size and character of the dwelling house, is required for the reasonable enjoyment of it as a residence.

Therefore, Peter will be exempt from tax on the sale of the house and adjacent garden. However, on the sale of the two plots, Peter will not be able to claim the own residence exemption and will be subject to a final property transfer tax thereon at 5% since the property has been owned for less than five years. This will result in a tax due of €35,000 (5% of €700,000).

Sicily farmhouse

Transfers of immovable property situated outside Malta fall outside the scope of the property transfer tax regime. Since the farmhouse has been owned for ten years, it can be assumed that its sale would not be classified as trading income, but will instead be governed by the capital gains regime which allows deductions for the cost of acquisition, and also allows further concessionary deductions to compensate for inflation and maintenance. As illustrated in working 1, the capital gain for Maltese tax purposes is calculated to be €58,679 which will result in a tax due of €20,538.

Sliema shop

A transfer of a business (which includes the totality of assets in that business, including any immovable property) as a going concern from an individual to a company in exchange for shares in that company is exempt from tax as long as the individual owns at least 75% of the share capital in the acquiring company. Given that all the conditions are satisfied, the transfer of the Sliema shop to the newly incorporated company will be exempt from the property transfer tax.

The exemption will apply and will not be clawed back as long as the business is not disposed of or ceases to exist within a period of two years starting from the date the business is transferred to the company.

Bugibba property

A transfer of immovable property to an estranged spouse through a public deed of separation is exempt from tax. Therefore, there will be no property transfer tax payable on the transfer of Peter's share in the Bugibba residence to his estranged wife.

Working 1

Capital gain computation on the sale of the Sicily farmhouse

	€	€
Selling price		120,000
Cost of acquisition	50,000	
Maintenance allowances (0·4% x 10)	2,000	
Inflation allowance 50,000 x (900 – 758·58)/758·58	9,321	
		(61,321)
Capital gain		58,679
Tax thereon at 35%		20,538
Tax due in Malta		20,538

(b) On the sale of the Swieqi bungalow, Maria will be able to claim the own residence exemption from tax on the sale of the originally acquired half of the house, where she has resided for more than three years (January 2018 to December 2021) (four years). However, on the other half, such exemption is not available since she would have resided therein for less than three years.

The property transfer tax rules provide for a reduced final withholding tax of 2% on the transfer of an immovable property when the transferor declares in the deed of acquisition that the property is being acquired for the purpose of establishing therein his sole ordinary residence, and the transfer is made not later than three years after the date of the acquisition. However, a pre-condition to qualify for the reduced property transfer tax is that the transferor does not own any other residential property at the time of the transfer. Since Maria intends to still own the Ta' Xbiex apartment when she transfers the Swieqi bungalow, she will not be eligible to pay the property transfer tax at the 2% rate. However, since the half property acquired through the divorce deed will be transferred within five years from the acquisition through the divorce proceedings, the property transfer tax will be chargeable at 5% on the transfer value which is equivalent to €10,000 (€400,000 x 5% x 50% (half acquired through the divorce)).

3 (a) (i) Advice on the Maltese income tax and VAT treatment of Mint Sundae's activities

As a person who is neither resident nor domiciled in Malta, Mint Sundae (Mint) will be taxable in Malta only on any Malta source income and capital gains which she may derive. Her fees from the concerts in Malta are Malta source income since the activities are physically carried out in Malta and they are therefore subject to income tax in Malta, subject to the treaty provisions. According to the treaty (as based on the OECD Model Convention), Malta is the source state and therefore has the right to tax such entertainment activities. Canada is required to allow appropriate double tax relief for any tax paid in Malta.

The Income Tax Act requires that any Maltese resident person making payments to a non-resident individual such as Mint must deduct a 25% withholding tax from the gross payments made to the non-resident. In the case of entertainment activities carried out in Malta by non-residents, this withholding tax rate is reduced to 10%, provided that the non-resident person does not carry out the entertainment activities in Malta for more than 15 days in any particular year of assessment.

Boom Productions Ltd (Boom) must therefore withhold tax at the rate of 10% on the payments made to Mint.

(ii) Advice on the Maltese VAT treatment of Mint Sundae's supply of services to Boom

In order to establish whether Mint will be required to register for VAT purposes in Malta and charge Maltese VAT on her supplies, Mint must establish the place of supply of her services for VAT purposes. The VAT Act provides for a specific place of supply rule applicable to the provision of entertainment services and which considers the place of supply to be where the activity is physically carried out. However, in the case of supplies between taxable persons, this place of supply rule applies only with respect to admission fees. Since in the case at hand, Mint is charging Boom a performance fee, the place of supply of the services will be regulated by the general B2B place of supply rule and deemed to take place where the customer (Boom) is established. Since Boom is VAT registered in Malta, Mint is not required to be VAT registered in Malta and instead Boom has the obligation to account for and pay VAT in Malta under the reverse charge mechanism.

(iii) Advice on the Maltese VAT treatment of Mint's entertainment activities in Malta

Mint's second concert is organised directly in Malta and she will charge admission fees for the entrance to the concert rather than a performance fee. The place of supply of this activity is therefore the place where the activity is physically carried out. Such a place of supply rule will apply in respect of the entertainment services charged to both taxable and non-taxable persons since an admission fee is being charged. In particular, in respect of the B2B supplies to the Italian taxable persons, it will not be possible to apply the general place of supply rule since the service consists in the admission to an event.

Therefore, Mint must register for VAT purposes in Malta under Article 10 of the VAT Act and charge Maltese VAT on all her supplies in Malta at the standard VAT rate in Malta. Mint will be able to offset against the output VAT, any Maltese input VAT incurred in order to organise the concert in Malta.

(b) (i) Advice on Ricasoli Development Limited's (RDL) withholding tax obligations and penalties for failure to withhold tax

The Income Tax Act provides that upon a payment of income chargeable to tax in Malta, by a person resident in Malta to a non-resident company, a 35% withholding tax must be deducted from the gross payment, and paid to the tax authorities within 30 days from the day of the deduction. The Commissioner may authorise the resident person to not withhold any tax or withhold tax at a lower rate, but unless directed otherwise by the Commissioner, RDL is required to withhold tax at 35% on any payments made to the non-resident construction company.

Should RDL fail to withhold such tax or fails to pay such tax within 30 days from the date of withholding, RDL would become liable to:

(a) still pay the tax to the tax authorities (even if not withheld); and

(b) an additional tax equal to the tax which should have been withheld (and which cannot be recovered from RDL in terms of the Income Tax Act).

(ii) Advice on RDL's right to claim input VAT on the construction costs

Persons registered for VAT in terms of Article 10 are entitled to claim a credit for input VAT which is directly related to their taxable and exempt with credit supplies.

The transfer of immovable property is treated as an exempt without credit supply. Therefore, should RDL decide to sell all the units, it will be unable to claim a credit for any of the VAT charged to it by Construct Spa since such a supply would be exclusively related to an exempt without credit supply.

Alternatively, the provision of accommodation in an MTA licensed property is a taxable supply albeit at a reduced VAT rate of 7%. In this case, RDL would be able to claim a full deduction for all VAT charged on the construction costs.

4 (a) Income tax, duty on documents and transfers and VAT treatment of the transfer of intangibles

Black Eyed Peas Ltd (BEP) is taxable in Malta on a worldwide basis due to its Maltese incorporation.

The transfer of assets to Lentils Ltd (LL) is a transaction of a capital nature because it is a transfer of the company's income earning assets. The transfer of assets is taxable if it includes an asset or a transaction listed in Article 5 of the Income Tax Act (ITA).

Article 5 ITA includes business, trade name and intellectual property as chargeable assets, so, in the first instance, the proposed transfer will potentially create a taxable capital gain, chargeable on BEP.

However, the ITA provides for an exemption from tax on the transfer of assets between two companies which form part of the same group, providing that both are companies which are more than 50% owned by the same persons (being legal persons or individuals). Since BEP and LL are both owned to the extent of more than 50% directly by Chickpeas Ltd, the transfer of the business qualifies for a full exemption from income tax.

The Duty on Documents and Transfers Act (DDTA) provides for certain transfers and transactions which give rise to stamp duty. A transfer of a business, trade name and intellectual property is outside the scope of the DDTA and therefore the transfer of the business from BEP to LL will not give rise to any stamp duty.

Value added tax (VAT) must be charged on every supply for a consideration which is made by a taxable person acting as such. Therefore, the transfer of the business by BEP, as a taxable person registered for VAT purposes in Malta, to LL is potentially a taxable supply subject to Maltese VAT at 18%.

However, the VAT Act allows that a transfer of a business is not treated as a taxable supply if the transfer of the assets or of the economic activity qualifies to be treated as a transfer of a going concern (and therefore as neither a supply of goods nor as a supply of services) and thereby outside the scope of VAT.

In order to qualify for this treatment, a transfer of a going concern must satisfy all of the following conditions:

(i) the assets are transferred to a person registered under Article 10 to which there is transferred the economic activity, or part of that economic activity which is capable of separate operation, as a going concern (this condition is satisfied since LL is registered for VAT under Article 10 and it is stated that LL's intention is to take over BEP's business operations); and

(ii) the assets will be used by LL to carry on the same activity as that carried on by the BEP; and

(iii) the transfer is recorded in BEP's records indicating LL's VAT registration number.

Since all the three conditions are satisfied, the transfer will be outside the scope of VAT, BEP will not charge any VAT on the business transfer and LL will not be able to claim any credit for any input VAT relating to the transfer.

(b) (i) John's Maltese tax liability

John is considered to be resident but not domiciled in Malta since it appears that he does not wish to stay in Malta for the indefinite future and, in particular, does not exclude that one day he may move back to Ireland. Therefore, for Maltese tax purposes he is considered to have retained his Irish domicile of origin and has not acquired a Maltese domicile of choice. His foreign income is taxable in Malta on a remittance basis (i.e. only if received in Malta). Foreign source capital gains are outside the scope of Maltese tax irrespective of remittance. Malta source income is taxable in Malta.

John is taxable in Malta, at the progressive single tax rates, on the consultancy services provided from Malta (this is considered to be Malta source income, since it is not attributable to a permanent establishment outside Malta, and therefore taxable in Malta regardless of whether it is remitted to Malta) and also on the dividend received from the Irish company, which was remitted to Malta. John will be able to claim double tax relief for the 10% tax withheld by Ireland. The capital proceeds and capital gain from the sale of the apartment in Dublin are outside the scope of Maltese tax because they derive from foreign source capital gains.

He will be able to deduct the alimony payments paid to his ex-wife from the income which is taxable in Malta.

Given that John does not derive foreign source income in excess of €35,000 during the year of assessment, he is not liable to pay the minimum annual tax of €5,000.

(ii) Calculation of John's Maltese tax liability

	€
Consultancy services	20,000
Foreign dividend	2,000
Foreign capital gain	0
Alimony payments	(4,000)
Taxable income	18,000
Tax thereon at single rates	1,685
Double tax relief (working 1)	(187)
Tax due	1,498

Working 1 – Effective tax calculation

$$\frac{\text{Total tax}}{\text{Total income}} = \frac{1{,}685}{18{,}000} = 9{\cdot}36\%$$

Effective tax on foreign income = 9·36% x 2,000 = €187

Deduct lower of:

Maltese tax on foreign income: €187, and
Irish tax on foreign income €200

			Available	*Maximum*
1	**(a)**	**Maltese tax treatment of the trading income, interest and dividend income**		
		VML incorporated, managed and controlled in Malta, taxable on a worldwide basis	0·5	
		Trading income allocated to MTA since not attributable to a permanent establishment outside Malta	0·5	
		Requirement to carry out a secondary allocation to IPA in respect of annual market rent, reference to €250/m^2, and AMR calculation	1·5	
		Able to make the secondary allocation in full during the year of assessment	0·5	
		MTA 6/7ths tax refund, no refund on IPA dividends	1·0	
		Interest income allocated to FIA	0·5	
		Treated as passive interest since income of a passive nature and did not suffer a minimum 5% foreign tax – 5/7ths tax refund without double tax relief (10% effective tax)	1·5	
		Option to claim FRFTC and end up with 2/3rds tax refund and 6·25% effective tax	1·5	
		Participation exemption availability for the dividend income, considering:	0·5	
		Equity shareholding	1·0	
		Participating shareholder	1·0	
		Anti-abuse provisions	1·0	
		Allocated to the untaxed account	0·5	
			11·5	9
	(b)	**Impact of the interest limitation rule introduced by the ATAD on VML**		
		Limit the net interest deduction to 30% of EBITDA	0·5	
		Definition of exceeding borrowing costs	2·0	
		EBITDA components and how it is calculated utilising chargeable income	1·5	
		Exclude exempt income (dividend in the case of VML)	1·0	
		In any case may deduct €3m	1·0	
		Standalone entities able to deduct borrowing costs in full but VML cannot be considered to be a standalone entity due to 25%+ shareholding in FML	1·5	
		May deduct borrowing costs on unmodified loans pre 17 June 2016 (€12m for VML)	1·0	
		Any excess borrowing costs carried forward indefinitely to be deducted in future years. Unused interest capacity can be carried forward for five years	2·0	
			10·5	9
	(c)	**Exceeding borrowing costs calculation**		
		Participation exemption dividend deduction	0·5	
		Add backs: depreciation, amortisation and unrealised gain (2 x 0·5)	1·0	
		Set-off of interest receivable against interest payable	0·5	
		Deduction of pre 17 June 2016 loans	0·5	
		30% of EBITDA calculation	1·0	
		Disallowed interest	0·5	4
	(d)	**Chargeable income and tax charge calculation including tax account allocation**		
		Opening figure – 103 – 2 – 10; less dividend, less interest	1·0	
		Add back of two disallowed items and disallowed interest (3 x 0·5)	1·5	
		Wear and tear deduction	0·5	
		MTA primary allocation	0·5	
		IPA secondary allocation	1·0	
		Interest income calculation with FRFTC and FIA allocation	2·0	
		FTA allocation of participation exemption dividend	0·5	7
	(e)	**MTA tax refund calculation**		
		Net MTA dividend	0·5	
		Gross dividend and tax at source	0·5	
		6/7ths tax refund	1·0	2
	Presentation:			
	Appropriate format of letter		1·0	
	Logical development		1·0	
	Effectiveness of communication		2·0	4
				35

			Available	Maximum
2	(a)	**Advice on the property transfer tax and income tax on capital gains arising on the transfers of eight immovable properties**		
		Transfers of immovable property (IP) situated in Malta – default final 8% property transfer tax on the transfer value (higher of consideration and market value)	1·0	
		Marsascala – transfer of IP acquired before 2004 – 10% property transfer tax, €120,000 (10% of €1·2m)	2·0	
		Madliena – acquired *causa mortis* after 24 November 1992, property transfer tax computed at 12% on the difference between the transfer value and the lower of value declared on the declaration *causa mortis* and the market value at the time of the declaration €216,000 (12% of €2m less €200,000)	2·5	
		Option to pay tax on the transfer under the default rule which would result in a lower tax leakage of 8% of €2,000,000, that is €160,000	1·0	
		The Valley – SDA IP, therefore on the first transfer option to be taxed on trading profits rather than be subject to the property transfer tax. However, IP transfer happening after 2015, therefore subject to the property transfer tax €128,000 (8% of €1,600,000)	2·0	
		Manikata – exemption on transfer of own residence (sole or main residence)	1·0	
		Three years minimum holding period, transfer to happen within one year from vacation	1·0	
		Exemption also includes land used as garden or for enjoyment and reasonable vis à vis the residence being transferred in the same deed. Therefore, PB exempt on sale of house and garden but not the two plots	2·0	
		Plots owned for less than five years, therefore property transfer tax of €35,000 (5% of €700,000)	1·5	
		Sicily farmhouse – transfers of immovable property situated outside Malta fall outside the scope of the property transfer tax regime	1·0	
		Governed by the capital gains regime which apart from the cost of acquisition allows further concessionary deductions to compensate for inflation and maintenance	1·0	
		Calculation of capital gain:		
		Cost of acquisition deduction	0·5	
		Maintenance allowance deduction	1·0	
		Inflation allowance deduction	1·5	
		Sliema – transfer of totality of assets in a business, in exchange for shares in a company, is exempt from tax as long as the individual owns at least 75% of the share capital in the acquiring company	1·5	
		The exemption will apply and will not be clawed back as long as the business is not disposed of or ceases to exist within a period of two years starting from the date the business is transferred to the company	2·0	
		Bugibba – transfer of IP to an estranged spouse during the course of a separation by the courts of law or through a public deed is exempt from tax	1·0	
			23·5	20
	(b)	Maria can claim own residence exemption (three years+ residence) only on half of the property (originally held, not acquired through separation deed)	2·0	
		The 2% reduced rate for sale within three years not available since at time of sale Maria would still own an apartment in Ta' Xbiex	1·5	
		Transfer within five years, therefore 5% property transfer tax €10,000 (€400,000 x 5% x 50%)	2·0	
			5·5	5
				25

				Available	Maximum
3	(a)	(i)	**Advice on the Maltese tax treatment of Mint Sundae's activities**		
			Non-resident and non-domiciled, taxable in Malta on a source basis	0·5	
			Concerts in Malta deemed to be Malta source income	0·5	
			Treaty grants the source state (where activities carried out) right to tax entertainment activities	1·5	
			Resident payor obliged to deduct 25% withholding tax on payments to non-residents reduced to 10% in case of entertainers	1·5	4
		(ii)	**Advice on the Maltese VAT treatment of Mint's supply of services to BP**		
			Shift from the general place of supply rule to the place where carried out for entertainment activities subject to an admission fee	1·0	
			Mint supply to BP is a B2B supply and not an admission fee, therefore general rule applies and deemed to take place where customer as a taxable person is established	1·0	
			Since BP is VAT registered in Malta, Mint is not required to be VAT identified in Malta and can shift the liability to account for and pay VAT in Malta onto BP	1·0	3
		(iii)	**Advice on the Maltese VAT treatment of Mint's entertainment activities in Malta**		
			Direct organisation of concert departure from general B2B rule and place of supply deemed to be in Malta where activity is physically carried out since an admission fee is charged. Applies also for B2B supplies	2·0	
			Mint is required to register for VAT purposes in Malta in terms of Article 10 of the VAT Act and charge Maltese VAT on all her supplies in Malta	1·0	
			Mint will be entitled to offset against the output VAT any Maltese input VAT incurred in order to organise the concert in Malta	1·0	4
	(b)	(i)	**Advice on RDL's withholding tax obligations and penalties for failure to withhold tax**		
			Upon a payment of income chargeable to tax in Malta, by a person resident in Malta to a non-resident company, a 35% withholding tax must be deducted from the gross payment	1·0	
			Such withholding tax to be paid to the tax authorities within 30 days from the day of the deduction	1·0	
			Commissioner may authorise a lower or no withholding tax	1·0	
			Failure to withhold tax or pay tax leads to liability for resident payor to suffer tax plus an equivalent penalty	2·0	5
		(ii)	**Advice on RDL's right to claim input VAT**		
			Article 10 taxable person entitled to claim a credit for input VAT	1·0	
			Transfers of immovable property is an exempt without credit supply. Therefore, RDL no right to claim input VAT on construction costs	2·0	
			Provision of accommodation is a taxable supply subject to a 7% VAT rate. Therefore, RDL a full right to claim input VAT on construction costs	2·0	
				5·0	4
					20

			Available	Maximum
4	**(a)**	**Income tax, duty on documents and transfers and VAT treatment of the transfer of intangibles**		
		Taxable in Malta since Malta source income and BEP taxable on a worldwide basis	1·0	
		Transfer of a capital nature. Assets listed in Article 5 and therefore taxable	1·0	
		Intra group exemption, more than 50% owned by the same individuals, conditions satisfied, therefore exempt from income tax	1·5	
		Assets not subject to stamp duty	1·0	
		VAT to be charged on every supply of goods and services	1·0	
		Transfer of a going concern exempt	0·5	
		Going concern conditions: the assets are transferred to a person registered under Article 10 to which there is transferred the economic activity, or part of that economic activity which is capable of separate operation, as a going concern and the assets will be used by LL to carry on the same activity as that carried on by BEP; and the transfer is recorded in BEP's records indicating LL's VAT registration number	4·0	
		Going concern conditions satisfied	0·5	
			10·5	9
	(b)	**(i) John's Maltese tax liability**		
		Not Maltese domiciled, as resident non-domiciled taxable on a remittance basis and explanation of remittances basis of taxation	2·0	
		Progressive tax rates	1·0	
		Consultancy services – Malta source income	0·5	
		Irish dividend taxed in Malta as remitted to Malta	0·5	
		Capital gains not taxed	0·5	
		Alimony payments deductible	1·0	
		Since foreign income does not exceed €35,000, €5,000 minimum tax not applicable	1·0	
			6·5	6
		(ii) Calculation:		
		Consultancy services	0·5	
		Dividend	1·0	
		Capital gains	0·5	
		Alimony payment deduction	0·5	
		Tax at progressive rates	0·5	
		Double tax relief	2·0	5
				20