



MALTA
INSTITUTE
OF TAXATION

CAPITAL GAINS AND
DUTY
CHRISTIAN VELLA

1

DISCLAIMER

This material is the intellectual property of Malta Institute of Taxation. It is for the sole use of the registered webinar participant to whom it was made available, exclusively for their educational purposes. The publication, whether in whole or in part, reproduction, distribution and / or editing of the content is prohibited. Likewise, the recording of a webinar in audio or video, including by means of screenshots, is strictly prohibited.

Any views and opinions expressed during this presentation are those of the speaker and do not necessarily reflect or represent the views and opinions of the Malta Institute of Taxation. The Malta Institute of Taxation does not endorse nor approve, and assumes no responsibility for the accuracy of, the information provided herein.

Furthermore, as this material is intended for educational purposes only, it does not in any way constitute advice and should not be relied upon as such. Any reference to practices, whether past or present, should not be construed as an endorsement thereof. The Malta Institute of Taxation and the speaker assume no duty of care toward any person who may place reliance on the contents hereof.

The content of this presentation is intended to reflect the speaker's understanding of the legislation and / or practices applicable as at the date of first delivery, that is, the date specified below.

Date: 13 April 2023



MALTA
INSTITUTE
OF TAXATION

2

AGENDA

- Case Studies



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

3

3

CASE STUDY 1

CAPITAL GAINS AND DUTY

© Malta Institute of Taxation 2023

4

4

CASE STUDY 1

CAPITAL GAINS AND DUTY

- On 1 November 2000, Mr A acquired an immovable property at a cost of €150,000.
- The property was not his primary residence.
- On the 1 February 2010, Mr A donated the property to his son, Mr B.
- Neither Mr A nor Mr B resided in the property at the time of the transfer.
- The market value of the property at the date of donation was €300,000.
- On 1 March 2023, Mr B sold the property to a third party for a consideration of €650,000, which was equivalent to the market value of the property at that date.
- The buyer was not purchasing the property in order to establish his sole residence.
- Determine the applicable Malta income tax and duty considerations arising on the property transfer that took place on 1 March 2023.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

5

5

CASE STUDY 1

CAPITAL GAINS AND DUTY

- **Capital Gains:**
- Final tax is calculated at the higher of the consideration or market value.
- In this case, the two are equivalent (€650,000).
- The rate of tax is 12% on the difference between the transfer value and the acquisition value:
- $(€650,000 - €300,000) \times 12\% = €42,000$

Article 5A(5)(b) ITA:

When a transfer to which article 5A ITA applies is a transfer of property –

- That was acquired by the transferor in terms of a transfer *causa mortis* that happened after the 24 November 1992; or
- That was acquired by the transferor in terms of a donation made more than 5 years before the date of the transfer in question,

The tax thereon shall be chargeable at 12% of the excess, if any, of the transfer value over its acquisition value.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

6

6

CASE STUDY 1

CAPITAL GAINS AND DUTY

- **Duty:**
- Duty would be charged at the rate of €5 for every €100 on the higher of the market value and the consideration:
- $€650,000 \times 5\% = €32,500$

Article 32(1) DDTA:

There shall be charged on every document and on every judgement, decree or order of any court or other lawful authority, whereby any immovable or any real right over an immovable is transferred to any person, and on every declaration of transfers *causa mortis* in respect of persons from whom the transfer *causa mortis* originates who died on or after the 23 November 1999, a duty of €5 for every €100 or part thereof of the amount or value of the consideration for the transfer of such thing or of the value of such thing, whichever is the higher.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

7

7

CASE STUDY 2

CAPITAL GAINS AND DUTY

© Malta Institute of Taxation 2023

8

8

CASE STUDY 2

CAPITAL GAINS AND DUTY

- On 1 April 1985, Ms X inherited an immovable property, which had a market value of €50,000 as at that date.
- On 31 March 2023, Ms X sold the property to a third party for a consideration of €450,000.
- The market value of the property on the date of the transfer was €475,000.
- The buyer was purchasing this property as their first immovable property in order to establish his sole, ordinary residence thereon.
- Determine the applicable Malta income tax and duty considerations arising on the property transfer that took place on 31 March 2023.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

9

9

CASE STUDY 2

CAPITAL GAINS AND DUTY

- **Capital Gains:**
- Final tax is calculated at the higher of the consideration or market value.
- In this case, the market value is higher (€475,000).
- The rate of tax is 7% of the transfer value:
- $€475,000 \times 7\% = €33,250$

Article 5A(5)(c) ITA:

When a transfer to which this article applies is a transfer of property that was acquired by the transferor in terms of a transfer *causa mortis* and –

- The said acquisition *causa mortis* happened before the 25 November 1992; or
- The said acquisition *causa mortis* happened on or after the 25 November 1992, and the property is transferred by means of a judicial sale by auction,

The tax thereon shall be chargeable at the rate of 7% of the transfer value.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

10

10

CASE STUDY 2

CAPITAL GAINS AND DUTY

- **Duty:**
- No duty is chargeable on the first €200,000 since the buyer is purchasing his first property in order to establish his sole, ordinary residence.
- Duty would be charged at the rate of €5 for every €100 on the remaining transfer value:
- $(€475,000 - €200,000) \times 5\% = €275,000 \times 5\% = €13,750$

Rule 3 S.L. 364.12:

In respect of transfers of property made on or after the 20 October 2020 but before the 1 January 2024, which qualify for relief of duty under article 32(4)(a) DDTA, no duty shall be chargeable on the first €200,000 of the aggregate value of the consideration paid for the acquisition of such property by a person, provided that this is the first immovable property acquired *inter vivos* by such person and provided that the notary who receives any deed of such a transfer shall record in the deed a written declaration by the person so acquiring that this is the first immovable property acquired *inter vivos* by him and the notary shall warn the said person of the importance of the truthfulness of such declaration.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

11

11

CASE STUDY 3

CAPITAL GAINS AND DUTY

© Malta Institute of Taxation 2023

12

12

CASE STUDY 3

CAPITAL GAINS AND DUTY

- Mr Z acquired an immovable property on 1 January 2023 from an unrelated party, Mr A, for a consideration of €300,000.
- The property had a market value of €350,000 on that date.
- Mr A had inherited the property in 2010 when the property had a market value of €175,000.
- Neither Mr A nor Mr Z have established the property as their sole, ordinary residence.
- Determine the applicable Malta income tax and duty considerations arising on the property transfer that took place on 1 January 2023.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

13

13

CASE STUDY 3

CAPITAL GAINS AND DUTY

- **Capital Gains:**
- Final tax is calculated at the higher of the consideration or market value.
- In this case, the market value is higher (€350,000).
- The rate of tax is 12% on the difference between the transfer value and the acquisition value:
- $(€350,000 - €175,000) \times 12\% = €21,000$

Article 5A(5)(b) ITA:

When a transfer to which article 5A ITA applies is a transfer of property –

- That was acquired by the transferor in terms of a transfer *causa mortis* that happened after the 24 November 1992; or
- That was acquired by the transferor in terms of a donation made more than 5 years before the date of the transfer in question,

The tax thereon shall be chargeable at 12% of the excess, if any, of the transfer value over its acquisition value.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

14

14

CASE STUDY 3

CAPITAL GAINS AND DUTY

- **Duty:**
- Duty would be charged at the rate of €5 for every €100 on the higher of the market value and the consideration:
- $€350,000 \times 5\% = €17,500$

Article 32(1) DDTA:

There shall be charged on every document and on every judgement, decree or order of any court or other lawful authority, whereby any immovable or any real right over an immovable is transferred to any person, and on every declaration of transfers *causa mortis* in respect of persons from whom the transfer *causa mortis* originates who died on or after the 23 November 1999, a duty of €5 for every €100 or part thereof of the amount or value of the consideration for the transfer of such thing or of the value of such thing, whichever is the higher.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

15

15

CASE STUDY 4

CAPITAL GAINS AND DUTY

© Malta Institute of Taxation 2023

16

16

CASE STUDY 4

CAPITAL GAINS AND DUTY

- Alpha Limited is a Malta registered company with 200,000 issued shares having a nominal value of €1 each.
- The company holds immovable property for the generation of rental income and capital accretion. The investment property was acquired at a cost of €300,000 in 2015.
- Alpha Limited took out a bank loan to finance the acquisition of the investment property. As at 31 December 2022, the remaining balance of such bank loan amounted to €90,000.
- The company also holds 30% of the issued share capital of Beta Limited, which had originally been acquired from a third party.
- Mr X holds 75% of the issued share capital of Alpha Limited, which shares were acquired in 2013 at nominal value.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

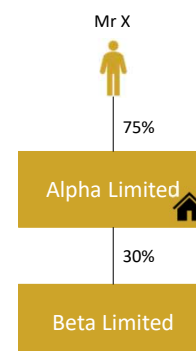
17

17

CASE STUDY 4

CAPITAL GAINS AND DUTY

- On 31 March 2023, the immovable property of Alpha Limited had a market value of €550,000.
- On this date, Mr X shall be transferring his entire holding in Alpha Limited to a third party, for a consideration of €700,000.
- Both Alpha Limited and Beta Limited have not distributed any dividends since their incorporation.
- Prepare the relevant workings and appropriate Malta income tax and duty schedules for this transaction by reference to the financial information available on the following slides.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

18

18

CASE STUDY 4

CAPITAL GAINS AND DUTY

- Profit before tax of each company for the past 5 years:

	Alpha Limited	Beta Limited
	€	€
2018	28,000	21,000
2019	36,000	25,000
2020	54,000	34,000
2021	71,000	51,000
2022	82,000	63,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

19

19

CASE STUDY 4

CAPITAL GAINS AND DUTY

Balance sheet extracts as at 31 December 2022	Alpha Limited	Beta Limited
	€	€
Non-Current Assets		
Property, plant and equipment	70,000	75,000
Investment property	300,000	-
Investment in Beta Limited	30,000	-
Current Assets		
Trade receivables	265,000	164,000
Cash	137,000	120,000
Total Assets	802,000	359,000
Liabilities		
Trade payables	212,000	29,000
Bank loans	90,000	-
Total Liabilities	302,000	29,000
Equity		
Share capital	200,000	100,000
Retained earnings	300,000	230,000
Total Equity	500,000	330,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

20

20

CASE STUDY 4

CAPITAL GAINS AND DUTY

- **Capital Gains:**
- Mr X holds 75% of the issued share capital of Alpha Limited.
- Therefore, this is a transfer of a controlling interest.
- Where there is a transfer of a controlling interest, the transfer value is the higher of the market value of the shares transferred and the consideration received.
- Schedule C must be submitted along with 7% provisional tax:
- $€713,010 \times 7\% = €49,910.70$



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

21

21

CASE STUDY 4

CAPITAL GAINS AND DUTY

- The market value of the company is calculated by reference to the financial statements as at the end of the financial year preceding that in which the transfer is made – in this case, 31 December 2022.
- No immovable property / shares were transferred by the company from 31 December 2022 up to the date of the share transfer.

Market value of Beta Limited	€
Net asset value as at 31 December 2022	330,000
Goodwill ($€21,000 + €25,000 + €34,000 + €51,000 + €63,000$) / 5 x 2	77,600
Market value of Beta Limited	407,600
Market value of Beta Limited attributable to Alpha Limited (30%)	122,280



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

22

22

CASE STUDY 4

CAPITAL GAINS AND DUTY

(Rule 5(10))

Schedule C

Notice in terms of Rule 5(10) of the Capital Gains Rules, 1993

Statement to be submitted by a transferor of shares where there is a transfer of controlling interest

Part 1 - Details of Transferor

Name	Mr X
Address	20, Triq il-Bahar, Qawra, Malta
ROC No (companies only)	N/A
Income Tax Registration No:	359667M

State the number of shares held by transferor immediately prior to the transfer:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	150,000	1 May 2013

Part 2 - Details of Company in which shares are being transferred

Company Name	Alpha Limited
Income Tax Registration No	996382649
Company year end	31 December
Date of incorporation	1 May 2013
ROC No	C 6728
Authorised share capital	200,000 ordinary shares with a nominal value of €1 each
Issued share capital	200,000 ordinary shares with a nominal value of €1 each

© Malta Institute of Taxation 2023

MALTA
INSTITUTE
OF TAXATION

23

23

CASE STUDY 4

CAPITAL GAINS AND DUTY

State whether: (Yes or No)

- a The Company holds shares directly or indirectly in other companies.
(if Yes attach details)
- b The Company or any companies specified in (a) above own immovable property at the date of the share transfer.
(if Yes attach details)
- c An increase or reduction in the share capital of the company took place within eighteen months prior to the date of the share transfer.
(if Yes attach details)
- d Any shares have been transferred by the transferor or a related party within eighteen months prior to the date of the share transfer.
(if Yes attach details)
- e The company came into existence as a result of a restructuring.
(if Yes attach details specifying the date and whether a merger, division, etc)
- f Such shares are held by a company whose shareholders, directly or indirectly, are all not resident in Malta.
- g The transfer is a transfer to which art 5(3)(a) of the act applies.

© Malta Institute of Taxation 2023

MALTA
INSTITUTE
OF TAXATION

24

24

CASE STUDY 4

CAPITAL GAINS AND DUTY

Part 3 - Details of share transfer

a	Date of share transfer	31 March 2023
b	Number of shares held at date of transfer	150,000 ordinary shares with a nominal value of €1 each
c	Number of shares transferred	150,000 ordinary shares with a nominal value of €1 each
d	Consideration for shares transferred	Cash consideration of €700,000

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	150,000	1 May 2013



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

25

25

CASE STUDY 4

CAPITAL GAINS AND DUTY

Part 4 - Computation of the market value of the shares transferred

The market value of the shares being transferred is to be determined as follows:

Market value of shares transferred / global transfer

Sec I : Determination of the % of the market value of the company as represented by such shares

	Type	Class	Nominal Value	Voting rights	Nom Value of shares transferred	Voting rights of shares transferred
Issued share capital	Ordinary	N/A	€200,000	200,000	€150,000	150,000
Total			€200,000	200,000	€150,000	150,000
			(A)	(B)	(C)	(D)

Percentage of the Market Value of company

75%	75%
(C/A)	(D/B)

a State whether there has been a change in the issued share capital of the company during the period of eighteen months preceding the transfer.

No



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

26

26

CASE STUDY 4

CAPITAL GAINS AND DUTY

Although the legislation has been updated to reflect the amended formula for calculating the market value percentage being transferred, such amended formula has not yet been reflected in the Capital Gains Schedule C available to download from the CfR's website. The below extract from the appendix to the Capital Gains Rules (S.L. 123.27) reflects the updated Schedule C applying the amended formula.

	Type	Class	Company total		Transferred shares		
			Nominal value	Voting rights	Nominal value	Voting rights	% of rights to profits distributable to ordinary shareholders
Issued share capital	Ordinary	N/A	€200,000	200,000	€150,000	150,000	75%
Total			€200,000	200,000	€150,000	150,000	75%
			(A)	(B)	(C)	(D)	(E)

Percentage of the market value of company	(XX)	$C/A \times 4 +$	$D/B \times 2 +$	$E \times 4$
	75%	(0.75×0.4)	(0.75×0.2)	(0.75×0.4)



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

27

27

CASE STUDY 4

CAPITAL GAINS AND DUTY

Sec II : Computation of Market value of company:

a Total Net Asset Value of the company: €500,000

b Market Value of shares held in another company representing at least 10% of the nominal value of the Issued share capital of that other company, determined in accordance with rule 5.

Company	Income Tax no.	Market Value
Beta Limited	993458273	€122,280

€122,280

Deduct book value of shares held in the company (as stated in the financial statements) €30,000

c Total market value of immovable property as stated in the Architect's Valuation (as per Part 5) €550,000
less Total book value of immovable property €300,000
Adjustment to the value of immovable property: €250,000

d Value of goodwill: (as calculated in Sec IV below) €108,400

e Deduct book value of the shares referred to in Rule 5(6)(d): NIL

f Total adjusted market value of the company: €950,680



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

28

28

CASE STUDY 4

CAPITAL GAINS AND DUTY

Sec III : Market value of shares transferred:		
a	Adjusted market value of the company (Sec IIe)	€950,680
b	% of market value as represented by shares transferred or global transfer (higher of C/A, D/B or Z in Sec I)	75%
c	Market value of shares transferred or global transfer (a X b)	€713,010
d	Total value taken into account for the purpose of determining the chargeable gain arising from each of the relevant transactions preceding this transfer	NIL
e	Market value of shares transferred (c - d)	€713,010
f	Value of the consideration of shares transferred (Part 3d)	€700,000
g	Value to be taken into account for the purpose of calculating any gain or loss from the share transfer (higher of e or f)	€713,010



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

29

29

CASE STUDY 4

CAPITAL GAINS AND DUTY

Sec IV : Calculation of the amount representing the value of goodwill:						
a	Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:					
	Year ended <u>31 December</u>					
	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Profit before tax	€28,000	€36,000	€54,000	€71,000	€82,000	€271,000
Value of goodwill:						€108,400
Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.						



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

30

30

CASE STUDY 4

CAPITAL GAINS AND DUTY

- **Duty:**
- The market value of Alpha Limited is to be calculated in accordance with the Capital Gains Rules for duty purposes, with one difference as per below.
- Disallowed liabilities:

	Property	Non-Property
	€	€
Assets	300,000	502,000
Liabilities	(90,000)	(212,000)
	210,000	290,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

31

31

CASE STUDY 4

CAPITAL GAINS AND DUTY

- The rate of duty applicable in this case is €5 on every €100 or part thereof:
- $\text{€}550,000 / \text{€}650,000 \times 100 = 84.62\%$

Non-current assets of Alpha Limited	€
Property, plant and equipment	70,000
Investment property	550,000
Investment in Beta Limited	30,000
	650,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

32

32

CASE STUDY 4

CAPITAL GAINS AND DUTY



SIXTH SCHEDULE (Rule 11(3))

Notice in terms of Rule 11(3) of the Duty on Documents and Transfers Rules, 1993

Statement to be submitted by transferee in a transfer of company shares

PART 1 - DETAILS OF TRANSFEROR AND TRANSFEREE

TRANSFEROR			
Name	Address	ROC No (companies only)	Income Tax Registration No
Mr X	20, Triq il-Bahar, Qawra, Malta	N/A	359667M
TRANSFEREE			
Name	Address	ROC No (companies only)	Income Tax Registration No
Third Party	13, Valley Road, Birkirkara, Malta	N/A	637278M

Page 01



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

33

33

CASE STUDY 4

CAPITAL GAINS AND DUTY

PART 2 - DETAILS OF COMPANY IN WHICH SHARES ARE BEING TRANSFERRED

Company Name	Alpha Limited
Income Tax Registration No	996382649
Company year end	31 December
Date of incorporation	1 May 2013
ROC No	C 6728
Authorised share capital	200,000 ordinary shares with a nominal value of €1 each
Issued share capital	200,000 ordinary shares with a nominal value of €1 each
State whether: (Yes or No)	
a The Company holds shares directly or indirectly in other companies. (If Yes attach details)	Yes
b The Company or any companies specified in (a) above own immovable property at the date of the share transfer. (If Yes attach details)	Yes

See the Office's Data Protection Policy on cfr.gov.mt

www.cfr.gov.mt



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

34

34

CASE STUDY 4

CAPITAL GAINS AND DUTY

PART 3 - DETAILS OF SHARE TRANSFER				
a	Date of share transfer	31 March 2023		
b	Number of shares transferred	150,000 ordinary shares with a nominal value of €1 each		
c	Consideration for shares transferred	Cash consideration of €700,000		

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number
Ordinary	N/A	1	€1	150,000

PART 4 - COMPUTATION OF THE REAL VALUE OF THE SHARES TRANSFERRED	
The real value of the shares being transferred is to be determined as follows:	
REAL VALUE OF SHARES TRANSFERRED	
Sec I: Determination of the % of the real value of the company as represented by such shares	
'A' is the percentage of the issued share capital represented by the nominal value of those shares.	75%
'B' is the percentage of the total voting rights in the company represented by the total voting rights attached to those shares.	75%
'C' is the percentage of the profits available for distribution to the ordinary shareholders represented by the profits available for distribution to the holder of those shares.	75%
'Y' represents the percentage to be determined.	$Y = (0.4 \times A) + (0.2 \times B) + (0.4 \times C)$
	75%

© Malta Institute of Taxation 2023

35



MALTA
INSTITUTE
OF TAXATION

CASE STUDY 4

CAPITAL GAINS AND DUTY

Sec II: Computation of real value of company in accordance with rule 5(6) and (7) of the Capital Gains Rules, 1993:			
a	Total Net Asset Value of the company:		€500,000
b	Real Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5 of the Capital Gains Rules, 1993:		
	Company	Income Tax no.	Real Value
	Beta Limited	993458273	€122,280
			€122,280
	Deduct book value of shares held in the company (as stated in the financial statements)		(€30,000)
c	Total real value of immovable property as stated in the Architect's Valuation (as per Part 6)	€550,000	
	less Total book value of immovable property	(€300,000)	
	Adjustment to the value of immovable property:		€250,000
d	Value of goodwill: (as calculated in Sec IV below)		€108,400
e	Deduct the book value of shares referred to in rule 5(6)(d) of the Capital Gains Rules, 1993:		NIL
f	Add Liabilities in excess of the value of all assets as determined in accordance with article 42(2)(c) of the Act:		NIL
g	Total Adjusted real value of the Company		€950,680

© Malta Institute of Taxation 2023

36



MALTA
INSTITUTE
OF TAXATION

CASE STUDY 4

CAPITAL GAINS AND DUTY

Sec III: Real value of shares transferred:	
a	Adjusted real value of the company (Sec IIg)
b	Percentage of real value as represented by shares transferred (higher of C/A, D/B in Sec I)
c	Real value of shares transferred (a X b)
d	Amount or value of the consideration for the shares transferred
e	Amount chargeable to duty (higher of c and d)
f	Rate of duty (€ 5 or € 2 for every one hundred euro or part thereof)
g	Amount of duty due (e X f)

Sec IV: Calculation of the Amount Representing the Value of Goodwill:					
a Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:					
Year ended <input type="text" value="31 December"/>					
Profit before tax					
Year 1	Year 2	Year 3	Year 4	Year 5	Total
€28,000	€36,000	€54,000	€71,000	€82,000	€271,000
Value of goodwill:					€108,400

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.

Page 03



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

37

37

CASE STUDY 5

CAPITAL GAINS AND DUTY

© Malta Institute of Taxation 2023

38

38

CASE STUDY 5

CAPITAL GAINS AND DUTY

- Mr A and Ms B each own 50% of XYZ Limited, which holdings were acquired at nominal value in 2010 upon incorporation of the company.
- The company's issued share capital consists of 100,000 ordinary shares with a nominal value of €0.50 each.
- The company holds immovable property for the generation of rental income and capital accretion. The investment property was acquired at a cost of €130,000 in 2011 and had a market value of €350,000 on 31 March 2023.
- The company also holds 25% of the issued share capital of ABC Limited.
- Neither XYZ Limited nor ABC Limited have distributed any dividends since their incorporation.
- All bank loans held by XYZ Limited relate to the company's trading activities.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

39

39

CASE STUDY 5

CAPITAL GAINS AND DUTY

- On the 1 April 2023, XYZ Limited allotted 100,000 ordinary shares to Mr A for a nominal value of €0.50 each.
- Prepare the relevant workings and appropriate Malta income tax and duty schedules for this transaction, by reference to the financial information available on the following slides.



MALTA
INSTITUTE
OF TAXATION

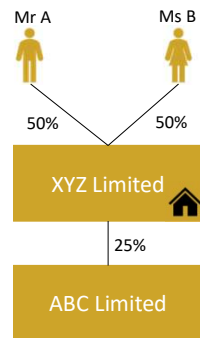
© Malta Institute of Taxation 2023

40

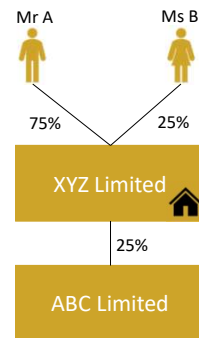
40

CASE STUDY 5
CAPITAL GAINS AND DUTY

Before allotment:



After allotment:



© Malta Institute of Taxation 2023

41

41

CASE STUDY 5
CAPITAL GAINS AND DUTY

- Profit before tax of each company for the past 5 years:

	XYZ Limited	ABC Limited
	€	€
2018	30,000	5,000
2019	21,000	16,000
2020	32,000	21,000
2021	41,000	18,000
2022	33,000	32,000



© Malta Institute of Taxation 2023

42

42

CASE STUDY 5

CAPITAL GAINS AND DUTY

Balance sheet extracts	XYZ Limited	XYZ Limited	ABC Limited
	31 March 2023	1 April 2023	31 December 2022
	€	€	€
Non-Current Assets			
Property, plant and equipment	40,000	40,000	143,000
Investment property	130,000	130,000	-
Investment in ABC Limited	25,000	25,000	-
Current Assets			
Trade receivables	75,000	75,000	48,000
Cash	27,000	77,000	63,000
Total Assets	297,000	347,000	254,000
Liabilities			
Trade payables	5,000	5,000	44,000
Bank loans	67,000	67,000	-
Total Liabilities	72,000	72,000	44,000
Equity			
Share capital	50,000	100,000	100,000
Retained earnings	175,000	175,000	110,000
Total Equity	225,000	275,000	210,000

© Malta Institute of Taxation 2023

MALTA
INSTITUTE
OF TAXATION

43

43

CASE STUDY 5

CAPITAL GAINS AND DUTY

- **Capital Gains:**
- In this situation, the value shifting provisions find application.
- The value transferred / acquired is calculated using the following formula:
- $Y = (A - B) + C - D$
- Schedule F must be submitted along with 7% provisional tax.

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

44

44

CASE STUDY 5

CAPITAL GAINS AND DUTY

- The market value of XYZ Limited is calculated by reference to the financial statements right before the value shift (i.e. 31 March 2023) and right after the value shift (i.e. 1 April 2023).
- The market value of ABC Limited is calculated by reference to the financial statements as at the end of the financial year preceding that in which the transfer is made – in this case, 31 December 2022.
- No immovable property / shares were transferred by ABC Limited from 31 December 2022 up to date of the value shift.

Market value of ABC Limited	€
Net asset value as at 31 December 2022	210,000
Goodwill (€5,000 + €16,000 + €21,000 + €18,000 + €32,000) / 5 x 2	36,800
Market value of ABC Limited	246,800
Market value of ABC Limited attributable to XYZ Limited (25%)	61,700



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

45

45

CASE STUDY 5

CAPITAL GAINS AND DUTY

(Rule 5A(5))

Schedule F

Notice in terms of Rule 5A(5) of the Capital Gains Rules, 1993

Computation of the gains or profits referred to in article 5(13)(b)(i)

Part 1 - Details of change in the issued share capital or voting rights

Nature of change:	Alteration of voting rights	(insert "Yes" or "No")
	Abolition of shares	No
	Conversion of shares	No
	Reduction in share capital	No
Date of change:	1 April 2023	

Give details:

Allocation of 100,000 ordinary shares with a nominal value of €0.50 each by XYZ Limited to Mr A.

In case of an allotment of shares state the amount paid to the company per share:	€0.50
In case of a reduction of share capital state the amount paid by the company per share:	N/A

Part 2 - Details of issued share capital of company

Immediately before change:

Type	Class	Votes per share	Nominal value per share (€)	Number of Shares	Total voting rights	Total nominal value (€)
Ordinary	N/A	1	€0.50	100,000	100,000	€50,000
				100,000	100,000	€50,000

Immediately after change:

Type	Class	Votes per share	Nominal value per share (€)	Number of Shares	Total voting rights	Total nominal value (€)
Ordinary	N/A	1	€0.50	200,000	200,000	€100,000
				200,000	200,000	€100,000

Note: Include only securities as defined in article 5(1)(b) of the Income Tax Act



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

46

46

Part 3 - Details of Shareholders / shareholdings

Note: Include only securities as defined in article 5(1)(b) of the Income Tax Act

Part 4 - Details of Company in which change was affected



© Malta Institute of Taxation 2023

47

47

State whether: (Yes or No)

- a. The Company holds shares directly or indirectly in other companies.
(If Yes attach details)
- b. The Company or any companies referred to in (a) above own immovable property at the date of the change in the issued share capital or voting rights.
(If Yes attach details)
- c. The company came into existence as a result of a restructuring.
(If Yes attach details specifying the date and whether a merger, division, etc)

☐ Yes☐ Yes

No

Part 5 - Computation of the value transferred

The value transferred is to be determined as follows:

Sec 1: Determination of the % of the market value of the company as represented by such reduction in value



© Malta Institute of Taxation 2023

48

48

Sec II : Computation of Market value of company:



© Malta Institute of Taxation 2023

49

Sec III : Calculation of the reduction in value:

Note 1: To be filled in cases where the change in the issued share capital consists of an issue of share capital for cash consideration or a reduction of capital.

Sec IV : Calculation of the amount representing the value of goodwill:

a Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:

Value of goodwill:

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.

© Malta Institute of Taxation 2023

50

25

CASE STUDY 5

CAPITAL GAINS AND DUTY

- **Duty:**
- The market value of XYZ Limited is to be calculated in accordance with the Capital Gains Rules for duty purposes.
- Disallowed liabilities:

	Before		After	
	Property	Non-Property	Property	Non-Property
	€	€	€	€
Assets	130,000	167,000	130,000	217,000
Liabilities	-	(72,000)	-	(72,000)
	130,000	95,000	130,000	145,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

51

51

CASE STUDY 5

CAPITAL GAINS AND DUTY

- The rate of duty applicable in this case is €5 on every €100 or part thereof.
- $\text{€}350,000 / \text{€}415,000 \times 100 = 84.34\%$

Non-current assets of XYZ Limited	€
Property, plant and equipment	40,000
Investment property	350,000
Investment in ABC Limited	25,000
	415,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

52

52

CASE STUDY 5

CAPITAL GAINS AND DUTY



FIFTH SCHEDULE (Rule 12(5))

Notice in terms of Rule 12(5) of the Duty on Documents and Transfers Rules, 1993

Computation of the value transferred referred to in article 42B of the Act

PART 1 - DETAILS OF CHANGE IN THE ISSUED SHARE CAPITAL OR VOTING RIGHTS		(Insert "Yes" or "No")
Nature of change	Alteration of voting rights	No
	Allotment of shares	Yes
	Conversion of shares	No
	Reduction in share capital	No
Date of change	1 April 2023	
GIVE DETAILS		
Allotment of 100,000 ordinary shares with a nominal value of €0.50 each by XYZ Limited to Mr A.		
In case of an allotment of shares state the amount paid to the company per share:		€0.50
In case of a reduction of share capital state the amount paid by the company per share:		N/A

Page 01



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

53

53

CASE STUDY 5

CAPITAL GAINS AND DUTY

PART 2 - DETAILS OF ISSUED SHARE CAPITAL OF COMPANY

Immediately before change:

Type	Class	Votes per Share	Nominal value per share (€)	Number of shares	Total voting rights	Total nominal value (€)
Ordinary	N/A	1	€0.50	100,000	100,000	€50,000
				100,000	100,000	€50,000

Immediately before change:

Type	Class	Votes per Share	Nominal value per share (€)	Number of shares	Total voting rights	Total nominal value (€)
Ordinary	N/A	1	€0.50	200,000	200,000	€100,000
				200,000	200,000	€100,000

Note: Include only shares as referred to in rule 12(8).

© Malta Institute of Taxation 2023

54

54



MALTA
INSTITUTE
OF TAXATION

55

20 more

Note: Include only shares as referred to in rule 12(8)

© Malta Institute of Taxation 2023



MALTA
INSTITUTE
OF TAXATION

55

PART 4 - DETAILS OF COMPANY IN WHICH CHANGE WAS AFFECTED	
Company Name	XYZ Limited
Income Tax Registration No	993542682
Company year end	31 December
Date of incorporation	1 February 2010
ROC No	C 3624

State whether: (Yes or No)

a	The Company holds shares directly or indirectly in other companies. (if Yes attach details)	Yes
b	The Company or any companies referred to in (a) above own immovable property at the date of the change in the issued share capital or voting rights. (if Yes attach details)	Yes
c	The company came into existence as a result of a restructuring. (if Yes attach details)	No

PART 5 - COMPUTATION OF THE VALUE TRANSFERRED
<p>The value transferred is to be determined as follows:</p> <p>Sec I: Determination of the % of the real value of the company</p>

www.cfr.gov.mt

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

56

57

© Malta Institute of Taxation 2023



© Malta Institute of Taxation 2023



c	Total real value of immovable property as stated in the Architect's Valuation (as per Part 6)	€350,000	€350,000
	less Total book value of immovable property	(€130,000)	(€130,000)
Adjustment to the value of immovable property:		€220,000	€220,000
d	Value of goodwill: (as calculated in Sec IV below)	€62,800	€62,800
e	Deduct book value of the shares referred to in rule 5(6)(d) of the Capital Gains Rules, 1993:	NIL	NIL
f	Add liabilities in excess of the value of all assets as determined in accordance with article 42(2)(c) of the Act:	NIL	NIL
g	Total adjusted real value of the company:	€544,500	€594,500

[illegible]

CASE STUDY 5

CAPITAL GAINS AND DUTY

Sec IV: Calculation of the amount representing the value of goodwill:

a Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:

Year ended

Profit before tax

Year 1	Year 2	Year 3	Year 4	Year 5	Total
€30,000	€21,000	€32,000	€41,000	€33,000	€157,000
Value of goodwill:					€62,800

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.

Page 05



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

61

61

CASE STUDY 6

CAPITAL GAINS AND DUTY

© Malta Institute of Taxation 2023

62

62

CASE STUDY 6

CAPITAL GAINS AND DUTY

- ABC Limited is a Maltese registered company, with 100,000 shares in issue, having a nominal value of €1 each.
- The company holds immovable property for the generation of rental income and capital accretion. The investment property was acquired at a cost of €200,000 in 2013. On the 31 January 2023, the immovable property had a market value of €250,000, which market value is expected to have increased to €270,000 by the end of May 2023.
- ABC Limited took out a bank loan to finance the acquisition of the investment property, of which €40,000 is still owing as at 31 December 2022.
- The company also holds 40% of the issued share capital of XYZ Limited. ABC Limited and XYZ Limited have not distributed any dividends since their incorporation.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

63

63

CASE STUDY 6

CAPITAL GAINS AND DUTY

- Ms A holds 10% of the issued share capital of ABC Limited, which she had acquired at nominal value in 2010. Ms B, the sister of Ms A, holds 20% of the issued share capital of ABC Limited, which she had also acquired at nominal value in 2010.
- **Part (i):** On the 31 January 2023, Ms A transferred her holding in ABC Limited to a third party for a consideration of €40,000.
- **Part (ii):** On the 31 May 2023, Ms B shall also be transferring her 20% holding in ABC Limited to the same third party, for a consideration of €90,000.
- Analyse any Malta income tax and duty requirements in connection with parts (i) and (ii) and, if applicable, prepare the relevant workings and appropriate tax and duty schedules for the transactions, by reference to the financial information on the following slides.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

64

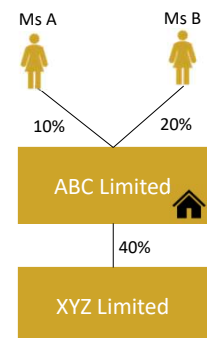
64

CASE STUDY 6

CAPITAL GAINS AND DUTY

- The profit before tax of each company for the past 5 years is as follows:

	ABC Limited	XYZ Limited
	€	€
2018	6,000	40,000
2019	3,000	22,000
2020	5,000	92,000
2021	8,000	46,000
2022	10,000	74,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

65

65

CASE STUDY 6

CAPITAL GAINS AND DUTY

Balance sheet extracts as at 31 December 2022	ABC Limited	XYZ Limited
	€	€
Non-Current Assets		
Property, plant and equipment	150,000	290,000
Investment property	200,000	-
Investment in XYZ Limited	75,000	-
Current Assets		
Trade receivables	66,000	101,000
Cash	94,000	77,000
Total Assets	585,000	468,000
Liabilities		
Trade payables	395,000	45,000
Bank loans	40,000	-
Total Liabilities	435,000	45,000
Equity		
Share capital	100,000	187,500
Retained earnings	50,000	235,500
Total Equity	150,000	423,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

66

66

CASE STUDY 6

CAPITAL GAINS AND DUTY

- **Part (i) – Capital Gains:**
- Ms A holds 10% of the issued share capital of ABC Limited.
- Therefore, this is a transfer of a non-controlling interest.
- Therefore, the transfer value is the consideration received, i.e. €40,000.
- Schedule D must be submitted along with 7% provisional tax:
- €40,000 x 7% = €2,800



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

67

67

CASE STUDY 6

CAPITAL GAINS AND DUTY

Schedule D

(Rule 5(10))

Notice in terms of Rule 5(10) of the Capital Gains Rules, 1993

Statement to be submitted by a transferor of shares where there is no transfer of controlling interest

Part 1 - Details of Transferor

Name	Ms A
Address	20, Triq il-Bahar, Qawra, Malta
ROC No (companies only)	N/A
Income Tax Registration No:	362478M

State the number of shares held by transferor immediately prior to the transfer:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	10,000	1 May 2010



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

68

68

CASE STUDY 6

CAPITAL GAINS AND DUTY

Part 2 - Details of Company in which shares are being transferred

Company Name	ABC Limited
Income Tax Registration No	993542863
Company year end	31 December
Date of incorporation	1 May 2010
ROC No	C 4365
Authorised share capital	100,000 ordinary shares with a nominal value of €1 each
Issued share capital	100,000 ordinary shares with a nominal value of €1 each

Part 3 - Details of share transfer

Date of share transfer	31 January 2023
Number of shares held at date of transfer	10,000 ordinary shares with a nominal value of €1 each
Number of shares transferred	10,000 ordinary shares with a nominal value of €1 each
Consideration being paid for shares transferred	Cash consideration of €40,000

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	10,000	1 May 2010



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

69

69

CASE STUDY 6

CAPITAL GAINS AND DUTY

- Part (i) – Duty:
- The market value of ABC Limited is to be calculated in accordance with the Capital Gains Rules for duty purposes.
- Disallowed liabilities:

	Property	Non-Property
	€	€
Assets	200,000	385,000
Liabilities	(40,000)	(395,000)
	160,000	(10,000)



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

70

70

CASE STUDY 6

CAPITAL GAINS AND DUTY

- The market value of the company is calculated by reference to the financial statements as at the end of the financial year preceding that in which the transfer is made – in this case, 31 December 2022.
- No immovable property / shares were transferred by the company from 31 December 2022 up to date of share transfer.

Market value of XYZ Limited	€
Net asset value as at 31 December 2022	423,000
Goodwill (€40,000 + €22,000 + €92,000 + €46,000 + €74,000) / 5 x 2	109,600
Market value of XYZ Limited	532,600
Market value of XYZ Limited attributable to ABC Limited (40%)	213,040



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

71

71

CASE STUDY 6

CAPITAL GAINS AND DUTY

- The rate of duty applicable in this case is €2 on every €100 or part thereof.
- $\text{€}250,000 / \text{€}475,000 \times 100 = 52.63\%$

Non-current assets of ABC Limited	€
Property, plant and equipment	150,000
Investment property	250,000
Investment in XYZ Limited	75,000
	475,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

72

72

CASE STUDY 6

CAPITAL GAINS AND DUTY



SIXTH SCHEDULE (Rule 11(3))

Notice in terms of Rule 11(3) of the Duty on Documents and Transfers Rules, 1993

Statement to be submitted by transferee in a transfer of company shares

PART 1 - DETAILS OF TRANSFEROR AND TRANSFEREE

TRANSFEROR			
Name	Address	ROC No (companies only)	Income Tax Registration No
Ms A	20, Triq il-Bahar, Qawra, Malta	N/A	362478M
TRANSFEREE			
Name	Address	ROC No (companies only)	Income Tax Registration No
Third Party	13, Valley Road, Birkirkara, Malta	N/A	126575M

Page 01



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

73

73

CASE STUDY 6

CAPITAL GAINS AND DUTY

PART 2 - DETAILS OF COMPANY IN WHICH SHARES ARE BEING TRANSFERRED

Company Name	ABC Limited
Income Tax Registration No	993542863
Company year end	31 December
Date of incorporation	1 May 2010
ROC No	C 4365
Authorised share capital	100,000 ordinary shares with a nominal value of €1 each
Issued share capital	100,000 ordinary shares with a nominal value of €1 each
State whether: (Yes or No)	
a The Company holds shares directly or indirectly in other companies. (if Yes attach details)	Yes
b The Company or any companies specified in (a) above own immovable property at the date of the share transfer. (if Yes attach details)	Yes

See the Office's Data Protection Policy on cfr.gov.mt

www.cfr.gov.mt



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

74

74

CASE STUDY 6

CAPITAL GAINS AND DUTY

PART 3 - DETAILS OF SHARE TRANSFER				
a	Date of share transfer	31 January 2023		
b	Number of shares transferred	10,000 ordinary shares with a nominal value of €1 each		
c	Consideration for shares transferred	Cash consideration of €40,000		

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number
Ordinary	N/A	1	€1	10,000

PART 4 - COMPUTATION OF THE REAL VALUE OF THE SHARES TRANSFERRED	
The real value of the shares being transferred is to be determined as follows:	
REAL VALUE OF SHARES TRANSFERRED	
Sec I: Determination of the % of the real value of the company as represented by such shares	
'A' is the percentage of the issued share capital represented by the nominal value of those shares.	10%
'B' is the percentage of the total voting rights in the company represented by the total voting rights attached to those shares.	10%
'C' is the percentage of the profits available for distribution to the ordinary shareholders represented by the profits available for distribution to the holder of those shares.	10%
'Y' represents the percentage to be determined.	$Y = (0.4 \times A) + (0.2 \times B) + (0.4 \times C)$
	10%

© Malta Institute of Taxation 2023

75

MALTA
INSTITUTE
OF TAXATION

CASE STUDY 6

CAPITAL GAINS AND DUTY

Sec II: Computation of real value of company in accordance with rule 5(6) and (7) of the Capital Gains Rules, 1993:		
a	Total Net Asset Value of the company:	€150,000
b	Real Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5 of the Capital Gains Rules, 1993:	
	Company	Income Tax no.
	XYZ Limited	993521672
		Real Value
		€213,040
		€213,040
		(€75,000)
	Deduct book value of shares held in the company (as stated in the financial statements)	
c	Total real value of immovable property as stated in the Architect's Valuation (as per Part 6) less Total book value of immovable property	€250,000 (€200,000)
	Adjustment to the value of immovable property:	€50,000
d	Value of goodwill: (as calculated in Sec IV below)	€12,800
e	Deduct the book value of shares referred to in rule 5(6)(d) of the Capital Gains Rules, 1993:	NIL
f	Add Liabilities in excess of the value of all assets as determined in accordance with article 42(2)(c) of the Act:	€10,000
g	Total Adjusted real value of the Company	€360,840

© Malta Institute of Taxation 2023

76

MALTA
INSTITUTE
OF TAXATION

CASE STUDY 6

CAPITAL GAINS AND DUTY

Sec III : Real value of shares transferred:	
a Adjusted real value of the company (Sec IIg)	€360,840
b Percentage of real value as represented by shares transferred (Higher of C/A, D/B in Sec I)	10%
c Real value of shares transferred (a X b)	€36,084
d Amount or value of the consideration for the shares transferred	€40,000
e Amount chargeable to duty (Higher of c and d)	€40,000
f Rate of duty (€ 5 or € 2 for every one hundred euro or part thereof)	€2
g Amount of duty due (e X f)	€800

Sec IV : Calculation of the Amount Representing the Value of Goodwill:						
a Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:						
Year ended <input type="text" value="31 December"/>						
Profit before tax						
Year 1	Year 2	Year 3	Year 4	Year 5	Total	
€6,000	€3,000	€5,000	€8,000	€10,000	€32,000	
Value of goodwill:						€12,800

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.

Page 03



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

77

77

CASE STUDY 6

CAPITAL GAINS AND DUTY

- **Part (ii) – Capital Gains:**
- Ms B holds 20% of the issued share capital of ABC Limited. Therefore, this is *prima facie* a transfer of a non-controlling interest.
- However, Ms A (a related person of Ms B) transferred her holding of 10% within a period of 18 months from the transfer of Ms B. Together, Ms A and Ms B held 30% of the issued share capital of ABC Limited. Therefore, the transfer by Ms B is a transfer of a controlling interest in terms of the global transfer rules.
- Where there is a transfer of a controlling interest, the transfer value is the higher of the market value of the shares transferred and the consideration received.
- Schedule C must be submitted along with 7% provisional tax:
- €90,000 x 7% = €6,300



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

78

78

CASE STUDY 6

CAPITAL GAINS AND DUTY

(Rule 5(10))

Schedule C

Notice in terms of Rule 5(10) of the Capital Gains Rules, 1993

Statement to be submitted by a transferor of shares where there is a transfer of controlling interest

Part 1 - Details of Transferor

Name	Ms B
Address	20, Triq il-Bahar, Qawra, Malta
ROC No (companies only)	N/A
Income Tax Registration No.	326480M

State the number of shares held by transferor immediately prior to the transfer:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	20,000	1 May 2010

Part 2 - Details of Company in which shares are being transferred

Company Name	ABC Limited
Income Tax Registration No	993542863
Company year end	31 December
Date of incorporation	1 May 2010
ROC No	C 4385
Authorised share capital	100,000 ordinary shares with a nominal value of €1 each
Issued share capital	100,000 ordinary shares with a nominal value of €1 each

© Malta Institute of Taxation 2023



MALTA
INSTITUTE
OF TAXATION

79

79

CASE STUDY 6

CAPITAL GAINS AND DUTY

State whether: (Yes or No)

- | | | |
|---|---|----------------------------------|
| a | The Company holds shares directly or indirectly in other companies.
<i>(if Yes attach details)</i> | <input type="text" value="Yes"/> |
| b | The Company or any companies specified in (a) above own immovable property at the date of the share transfer.
<i>(if Yes attach details)</i> | <input type="text" value="Yes"/> |
| c | An increase or reduction in the share capital of the company took place within eighteen months prior to the date of the share transfer.
<i>(if Yes attach details)</i> | <input type="text" value="No"/> |
| d | Any shares have been transferred by the transferor or a related party within eighteen months prior to the date of the share transfer.
<i>(if Yes attach details)</i> | <input type="text" value="Yes"/> |
| e | The company came into existence as a result of a restructuring.
<i>(if Yes attach details specifying the date and whether a merger, division, etc)</i> | <input type="text" value="No"/> |
| f | Such shares are held by a company whose shareholders, directly or indirectly, are all not resident in Malta. | <input type="text" value="No"/> |
| g | The transfer is a transfer to which art 5(3)(a) of the act applies. | <input type="text" value="No"/> |



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

80

80

CASE STUDY 6

CAPITAL GAINS AND DUTY

Part 3 - Details of share transfer

a	Date of share transfer	31 May 2023
b	Number of shares held at date of transfer	20,000 ordinary shares with a nominal value of €1 each
c	Number of shares transferred	20,000 ordinary shares with a nominal value of €1 each
d	Consideration for shares transferred	Cash consideration of €90,000

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	20,000	1 May 2010



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

81

81

CASE STUDY 6

CAPITAL GAINS AND DUTY

Part 4 - Computation of the market value of the shares transferred

The market value of the shares being transferred is to be determined as follows:

Market value of shares transferred / global transfer

Sec 1: Determination of the % of the market value of the company as represented by such shares

	Type	Class	Nominal Value	Voting rights	Nom Value of shares transferred	Voting rights of shares transferred
Issued share capital	Ordinary	N/A	€100,000	100,000	€30,000	30,000
Total			€100,000	100,000	€30,000	30,000
			(A)	(B)	(C)	(D)

Percentage of the Market Value of company

30%	30%
(C/A)	(D/B)

a State whether there has been a change in the issued share capital of the company during the period of eighteen months preceding the transfer.

No



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

82

82

CASE STUDY 6

CAPITAL GAINS AND DUTY

Although the legislation has been updated to reflect the amended formula for calculating the market value percentage being transferred, such amended formula has not yet been reflected in the Capital Gains Schedule C available to download from the Cfr's website. The below extract from the appendix to the Capital Gains Rules (S.L. 123.27) reflects the updated Schedule C applying the amended formula.

	Type	Class	Company total		Transferred shares		
			Nominal value	Voting rights	Nominal value	Voting rights	% of rights to profits distributable to ordinary shareholders
Issued share capital	Ordinary	N/A	€100,000	100,000	€30,000	30,000	30%
Total			€100,000	100,000	€30,000	30,000	30%
			(A)	(B)	(C)	(D)	(E)

Percentage of the market value of company	(XX)	C/A*.4 +	D/B*.2 +	E*.4
	30%	(0.30 x 0.4)	(0.30 x 0.2)	(0.30 x 0.4)



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

83

83

CASE STUDY 6

CAPITAL GAINS AND DUTY

Sec II : Computation of Market value of company:

a Total Net Asset Value of the company: €150,000

b Market Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5.

Company	Income Tax no.	Market Value
XYZ Limited	993521672	€213,040

€213,040

Deduct book value of shares held in the company (as stated in the financial statements) (€75,000)

c Total market value of immovable property as stated in the Architect's Valuation (as per Part 6) €270,000
less Total book value of immovable property (€200,000)

Adjustment to the value of immovable property: €70,000

d Value of goodwill: (as calculated in Sec IV below) €12,800

e Deduct book value of the shares referred to in Rule 5(6)(d): NIL

f Total adjusted market value of the company: €370,840



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

84

84

CASE STUDY 6

CAPITAL GAINS AND DUTY

Sec III : Market value of shares transferred:

a	Adjusted market value of the company (Sec IIe)	€370,840
b	% of market value as represented by shares transferred or global transfer (higher of C/A, D/B or Z in Sec I)	30%
c	Market value of shares transferred or global transfer (a X b)	€111,252
d	Total value taken into account for the purpose of determining the chargeable gain arising from each of the relevant transactions preceding this transfer	(€40,000)
e	Market value of shares transferred (c - d)	€71,252
f	Value of the consideration of shares transferred (Part 3d)	€90,000
g	Value to be taken into account for the purpose of calculating any gain or loss from the share transfer (higher of e or f)	€90,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

85

85

CASE STUDY 6

CAPITAL GAINS AND DUTY

Sec IV : Calculation of the amount representing the value of goodwill:

a	Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:						
	Year ended 31 December						
	Year 1	Year 2	Year 3	Year 4	Year 5	Total	
Profit before tax:	€6,000	€3,000	€5,000	€8,000	€10,000		€32,000
Value of goodwill:							€12,800

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

86

86

CASE STUDY 6

CAPITAL GAINS AND DUTY

- **Part (ii) – Duty:**
- The market value of ABC Limited is to be calculated in accordance with the Capital Gains Rules for duty purposes.
- The rate of duty applicable in this case is €2 on every €100 or part thereof:
- $\text{€}270,000 / \text{€}495,000 \times 100 = 54.55\%$

Non-current assets of ABC Limited	€
Property, plant and equipment	150,000
Investment property	270,000
Investment in XYZ Limited	75,000
	495,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

87

87

CASE STUDY 6

CAPITAL GAINS AND DUTY



SIXTH SCHEDULE (Rule 11(3))

Notice in terms of Rule 11(3) of the Duty on Documents and Transfers Rules, 1993

Statement to be submitted by transferee in a transfer of company shares

PART 1 - DETAILS OF TRANSFEROR AND TRANSFEREE

TRANSFEROR			
Name	Address	ROC No (companies only)	Income Tax Registration No
Ms B	20, Triq il-Bahar, Qawra, Malta	N/A	326480M

TRANSFEREE			
Name	Address	ROC No (companies only)	Income Tax Registration No
Third Party	13, Valley Road, Birkirkara, Malta	N/A	126575M

Page 01



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

88

88

CASE STUDY 6

CAPITAL GAINS AND DUTY

See the Office's Data Protection Policy on cfr.gov.mt

PART 2 - DETAILS OF COMPANY IN WHICH SHARES ARE BEING TRANSFERRED	
Company Name	ABC Limited
Income Tax Registration No	993542863
Company year end	31 December
Date of incorporation	1 May 2010
ROC No	C 4365
Authorised share capital	100,000 ordinary shares with a nominal value of €1 each
Issued share capital	100,000 ordinary shares with a nominal value of €1 each
State whether: (Yes or No)	
a The Company holds shares directly or indirectly in other companies. (if Yes attach details)	Yes
b The Company or any companies specified in (a) above own immovable property at the date of the share transfer. (if Yes attach details)	Yes

www.cfr.gov.mt



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

89

89

CASE STUDY 6

CAPITAL GAINS AND DUTY

Page 02

PART 3 - DETAILS OF SHARE TRANSFER				
a	Date of share transfer	31 May 2023		
b	Number of shares transferred	20,000 ordinary shares with a nominal value of €1 each		
c	Consideration for shares transferred	Cash consideration of €90,000		
Give details of the shares transferred:				
Type	Class	Votes per share	Nom Value per share	Number
Ordinary	N/A	1	€1	20,000

PART 4 - COMPUTATION OF THE REAL VALUE OF THE SHARES TRANSFERRED	
The real value of the shares being transferred is to be determined as follows:	
REAL VALUE OF SHARES TRANSFERRED	
Sec 1: Determination of the % of the real value of the company as represented by such shares	
'A' is the percentage of the issued share capital represented by the nominal value of those shares.	20%
'B' is the percentage of the total voting rights in the company represented by the total voting rights attached to those shares.	20%
'C' is the percentage of the profits available for distribution to the ordinary shareholders represented by the profits available for distribution to the holder of those shares.	20%
'Y' represents the percentage to be determined.	20%
$Y = (0.4 \times A) + (0.2 \times B) + (0.4 \times C)$	



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

90

90

CASE STUDY 6

CAPITAL GAINS AND DUTY

Sec II : Computation of real value of company in accordance with rule 5(6) and (7) of the Capital Gains Rules, 1993:			
a Total Net Asset Value of the company:			€150,000
b Real Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5 of the Capital Gains Rules, 1993:			
Company	Income Tax no.	Real Value	
XYZ Limited	993521672	€213,040	
			€213,040
Deduct book value of shares held in the company (as stated in the financial statements)			(€75,000)
c Total real value of immovable property as stated in the Architect's Valuation (as per Part 6)		€270,000	
less Total book value of immovable property		(€200,000)	
Adjustment to the value of immovable property:			€70,000
d Value of goodwill: (as calculated in Sec IV below)			€12,800
e Deduct the book value of shares referred to in rule 5(6)(d) of the Capital Gains Rules, 1993:			NIL
f Add Liabilities in excess of the value of all assets as determined in accordance with article 42(2)(c) of the Act:			€10,000
g Total Adjusted real value of the Company			€380,840

www.mta.gov.mt

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

91

91

CASE STUDY 6

CAPITAL GAINS AND DUTY

Sec III : Real value of shares transferred:	
a Adjusted real value of the company (Sec IIg)	€380,840
b Percentage of real value as represented by shares transferred (higher of C/A, D/B in Sec I)	20%
c Real value of shares transferred (a X b)	€76,168
d Amount or value of the consideration for the shares transferred	€90,000
e Amount chargeable to duty (Higher of c and d)	€90,000
f Rate of duty (€ 5 or € 2 for every one hundred euro or part thereof)	€2
g Amount of duty due (e X f)	€1,800

Sec IV : Calculation of the Amount Representing the Value of Goodwill:					
a Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:					
Year ended	31 December				
Profit before tax					
Year 1	Year 2	Year 3	Year 4	Year 5	Total
€6,000	€3,000	€5,000	€8,000	€10,000	€32,000
Value of goodwill:					€12,800

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.

Page 03

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

92

92

CASE STUDY 7

CAPITAL GAINS AND DUTY

© Malta Institute of Taxation 2023

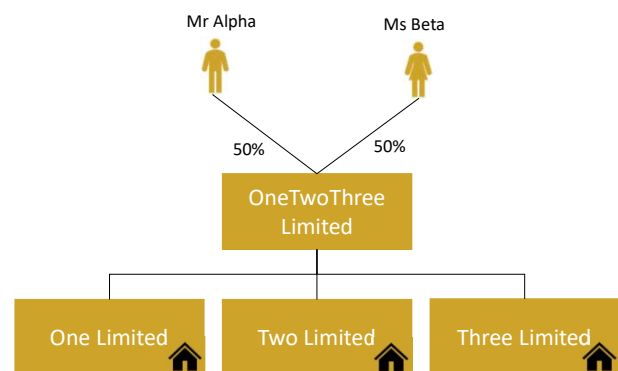
93

93

CASE STUDY 7

CAPITAL GAINS AND DUTY

- OneTwoThree Limited (the 'Company') is a Maltese registered company incorporated in 2015 by Mr Alpha and Ms Beta, a brother and sister who each hold 50% of the issued share capital of the Company.
- The Company has an issued share capital of 100,000 shares having a nominal value of €1 each.
- All shares within the group have a nominal value of €1.

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

94

94

CASE STUDY 7

CAPITAL GAINS AND DUTY

- The Company holds shares in 3 Malta registered companies:
 - In 2018, the Company incorporated One Limited and has always owned 100% of the subsidiary's issued share capital. One Limited provides marketing, administrative and other services to the group entities. For the purposes of its activities, One Limited owns immovable property situated in Malta, which it acquired on 31 October 2018.
 - In 2015, the Company incorporated Two Limited and has always owned 100% of the subsidiary's issued share capital. Two Limited is involved in the wholesale and retail of various household goods. Two Limited owns a number of immovable properties situated in Malta, which properties were acquired throughout 2015.
 - On 31 March 2018, the Company acquired 100% of the issued share capital of Three Limited, a company which holds shares in various local and foreign investments. Three Limited does not have any holdings exceeding 10% of the nominal value of the issued share capital of the companies it invests in. Three Limited also owns immovable property situated in Malta which was acquired in February 2019.



© Malta Institute of Taxation 2023

95

95

CASE STUDY 7

CAPITAL GAINS AND DUTY

- The nominal value, voting rights and rights to profits upon a dividend distribution for each share held in the group companies are equivalent to the percentage holding of issued share capital in each company.
- On 31 December 2019, the Company also acquired shares in 567 Plc, a company listed on the Malta Stock Exchange, for a total cost of €50,000, which cost represents the market value of the shares as at that date. This investment represent a capital asset for the Company.
- The Company holds less than 10% of the issued share capital of 567 Plc. 567 Plc provides consultancy services to various local customers, both corporate and individual. 567 Plc does not own any immovable property situated in Malta.



© Malta Institute of Taxation 2023

96

96

CASE STUDY 7

CAPITAL GAINS AND DUTY

- During 2022, the following transactions took place within the group:
 - 1) On 31 January 2022, the Company transferred 100% of the issued share capital of Three Limited to One Limited. The consideration for the transfer amounted to €167,000.
 - 2) On 1 March 2022, the Company disposed of its shares in 567 Plc, which had a market value of €70,000 as at that date. The consideration received amounted to €75,000.
 - 3) On 30 June 2022, the Company transferred 100% of the issued share capital of Two Limited to Star Limited, a third party. The consideration received by the Company amounted to €400,000.
 - 4) On 1 June 2022, One Limited signed a promise of sale in order to transfer its immovable property to a third party for a consideration of €275,000. The final contract was signed on 15 September 2022, on which date the immovable property had a market value of €280,000.
 - 5) On 1 September 2022, Ms Beta transferred her entire holding in the Company to Ms Pi, a third party, for a total consideration of €400,000.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

97

97

CASE STUDY 7

CAPITAL GAINS AND DUTY

- Explain the Malta income tax and duty considerations in respect of each of the above 5 transactions by reference to the financial information on the following slides, and prepare the relevant workings / calculations and appropriate Malta income tax and duty schedules, where necessary.
- It is relevant to note that:
 - The financial assets are recorded in the balance sheets of the group companies at cost.
 - All bank loans held by the group entities relate to the respective companies trading activities.
 - None of the companies have distributed any dividends since their incorporation.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

98

98

CASE STUDY 7

CAPITAL GAINS AND DUTY

- The profit / (loss) before tax of each company for the past 5 years is as follows:

	OneTwoThree Limited €	One Limited €	Two Limited €	Three Limited €
2017	(105,000)	-	2,000	33,000
2018	20,000	(2,000)	54,000	45,000
2019	177,000	6,000	73,000	65,000
2020	80,000	70,000	66,000	72,000
2021	120,000	89,000	109,000	(20,000)

© Malta Institute of Taxation 2023

MALTA
INSTITUTE
OF TAXATION

99

99

CASE STUDY 7

CAPITAL GAINS AND DUTY

- The market value of the investment property held by each company is as follows:

	One Limited €	Two Limited €	Three Limited €
31 December 2021	250,000	310,000	200,000
30 June 2022	275,000	400,000	210,000
1 September 2022	275,000	360,000	215,000

© Malta Institute of Taxation 2023

MALTA
INSTITUTE
OF TAXATION

100

100

CASE STUDY 7

CAPITAL GAINS AND DUTY

Balance sheets as at 31 December 2021	OneTwoThree Limited €	One Limited €	Two Limited €	Three Limited €
Non-Current Assets				
Property, plant and equipment	-	80,000	57,000	30,000
Investment property	-	200,000	240,000	130,000
Financial assets:				
<i>One Ltd</i>	60,000	-	-	-
<i>Two Ltd</i>	75,000	-	-	-
<i>Three Ltd</i>	200,000	-	-	-
<i>567 Plc</i>	50,000	-	-	-
<i>Other investments</i>	-	-	-	300,000
	385,000	280,000	297,000	460,000
Current Assets				
Trade receivables	15,000	20,000	67,000	22,000
Cash	123,000	46,000	9,000	24,000
Total Assets	523,000	346,000	373,000	506,000
Liabilities				
Trade payables	220,600	26,000	70,000	186,000
Bank loans	116,000	210,000	124,000	134,000
Total Liabilities	336,600	236,000	194,000	320,000
Equity				
Share capital	100,000	60,000	75,000	200,000
Retained earnings	86,400	50,000	104,000	(14,000)
Total Equity	186,400	110,000	179,000	186,000

© Malta Institute of Taxation 2023

MALTA
INSTITUTE
OF TAXATION

101

101

CASE STUDY 7

CAPITAL GAINS AND DUTY

Balance sheets as at 1 September 2022	OneTwoThree Limited €	One Limited €	Two Limited €	Three Limited €
Non-Current Assets				
Property, plant and equipment	-	80,000	57,000	30,000
Investment property	-	200,000	240,000	130,000
Financial assets:				
<i>One Ltd</i>	60,000	-	-	-
<i>Two Ltd</i>	-	-	-	-
<i>Three Ltd</i>	-	200,000	-	-
<i>567 Plc</i>	-	-	-	-
<i>Other investments</i>	-	-	-	300,000
	60,000	480,000	297,000	460,000
Current Assets				
Trade receivables	125,000	20,000	67,000	22,000
Cash	185,000	146,000	59,000	24,000
Total Assets	370,000	646,000	423,000	506,000
Liabilities				
Trade payables	3,600	229,500	10,000	198,000
Bank loans	116,000	210,000	124,000	134,000
Total Liabilities	119,600	439,500	134,000	332,000
Equity				
Share capital	100,000	60,000	75,000	200,000
Retained earnings	150,400	146,500	214,000	(26,000)
Total Equity	250,400	206,500	289,000	174,000

© Malta Institute of Taxation 2023

MALTA
INSTITUTE
OF TAXATION

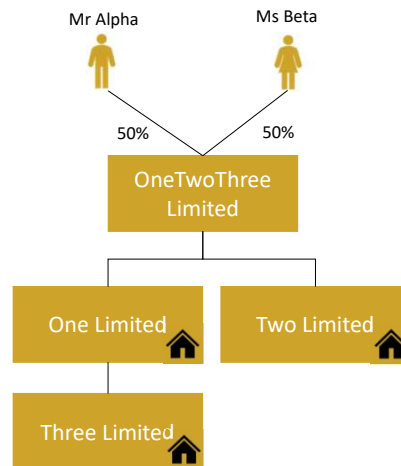
102

102

CASE STUDY 7

CAPITAL GAINS AND DUTY

- Transaction 1:



© Malta Institute of Taxation 2023



MALTA
INSTITUTE
OF TAXATION

103

103

CASE STUDY 7

CAPITAL GAINS AND DUTY

- **Capital Gains:**
- One Limited is a fully-owned subsidiary of the Company and both companies are resident in Malta.
- Therefore, they qualify as a group of companies in terms of article 16 of the ITA.
- As a result, upon a transfer of an asset (Three Limited), *prima facie*, it should be deemed that no loss or gain has arisen.
- However, as a result of Three Limited owning immovable property situated in Malta (i.e. it is a "property company" as defined in the ITA), additional criteria must be satisfied in order for the intra-group exemption to find application.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

104

104

CASE STUDY 7

CAPITAL GAINS AND DUTY

- The Company and One Limited are deemed to be held substantially by the same shareholders and, as a result, the intra-group exemption finds application in relation to this transfer.
- The transfer of shares in Three Limited initiates a 6-year de-grouping period.

	OneTwoThree Limited €	One Limited €
Mr Alpha	50%	50%
Ms Beta	50%	50%



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

105

105

CASE STUDY 7

CAPITAL GAINS AND DUTY

Schedule E

(Rule 5(14))

Notice in terms of Rule 5(10) of the Capital Gains Rules, 1993

Statement to be submitted by a transferor of shares where the transfer is exempt from tax in the circumstances mentioned in Rule 5(14)

Part 1 - Details of Transferor

Name	OneTwoThree Limited
Address	32, Qawra Road, Qawra, Malta
ROC No (companies only)	C 29585
Income Tax Registration No:	995599184

State the number of shares held by transferor immediately prior to the transfer:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	200,000	1 January 2018



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

106

106

CASE STUDY 7

CAPITAL GAINS AND DUTY

Part 2 - Details of Company in which shares are being transferred

Company Name	Three Limited
Income Tax Registration No	993848610
Company year end	31 December
Date of incorporation	1 January 2018
ROC No	C 29495
Authorised share capital	200,000 ordinary shares with a nominal value of €1 each
Issued share capital	200,000 ordinary shares with a nominal value of €1 each

Part 3 - Details of share transfer

Date of share transfer	31 January 2022
Number of shares held at date of transfer	200,000 ordinary shares with a nominal value of €1 each
Number of shares transferred	200,000 ordinary shares with a nominal value of €1 each
Consideration being paid for shares transferred	Cash consideration of €167,000

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	200,000	1 January 2018



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

107

107

CASE STUDY 7

CAPITAL GAINS AND DUTY

Part 4 - Details of exemption

State under which of the following provisions the share transfer is exempt:

Article 5(2)(e) Income Tax Act	
Article 5(6)(e) Income Tax Act	
Article 5(9) Income Tax Act	×
Article 5(13) Income Tax Act [please quote specific paragraph]	
Article 5(14) Income Tax Act	
Article 12 Income Tax Act [please quote specific paragraph]	
Rule 3(1): Merchant Shipping (Taxation and Other Matters relating to Shipping Orgs.) Regs	



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

108

108

CASE STUDY 7

CAPITAL GAINS AND DUTY

- **Duty:**
- The Company and One Limited satisfy the criteria to be considered a group of companies for Malta duty purposes.
- Additionally, the companies are substantially beneficially owned by the same individuals.
- As a result, the transfer does not give rise to any Malta duty liability on the basis that the transfer is part of a re-organisation within a group of companies.



© Malta Institute of Taxation 2023

109

109

CASE STUDY 7

CAPITAL GAINS AND DUTY

- **Transaction 2 – Capital Gains:**
- Given that the Company held the shares as a capital asset and the shares transferred are listed on an approved stock exchange, no Malta income tax liability should arise.

Article 5(6)(b) ITA:

The provisions of article 5(1)(a)(ii) ITA shall not apply to gains or profits relating to:

(b) Transfer of shares listed, or in consequence of a listing, on a stock exchange recognised by the Commissioner for the purpose of this provision not being securities in a collective investment scheme



© Malta Institute of Taxation 2023

110

110

CASE STUDY 7

CAPITAL GAINS AND DUTY

- **Duty:**
- Given that the shares transferred are listed on an approved stock exchange, no duty liability should arise.

Article 50 Financial Markets Act, chapter 345 of the laws of Malta:

No duty shall be payable in respect of any transfer of any financial instruments of a quoted company, or the transfer of any financial instruments of the Government or any body corporate established by law, where such transfer is made either on a regulated market or outside the regulated market on which they are listed in terms of article 45 or on a regulated multilateral system or an equivalent regulated market or multilateral system in a non-Member State or non-EEA State.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

111

111

CASE STUDY 7

CAPITAL GAINS AND DUTY

- **Transaction 3:**



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

112

112

CASE STUDY 7

CAPITAL GAINS AND DUTY

- **Capital Gains:**
- The Company holds 100% of the issued share capital of Two Limited. Therefore, this is a transfer of a controlling interest. Where there is a transfer of a controlling interest, the transfer value is the higher of the market value of the shares transferred and the consideration received.
- Schedule C must be submitted along with 7% provisional tax: €460,600 x 7% = €32,242
- The market value of the company is calculated by reference to the financial statements as at the end of the financial year preceding that in which the transfer is made – in this case, 31 December 2021. No immovable property / shares were transferred by the company from 31 December 2021 up to the date of the share transfer.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

113

113

CASE STUDY 7

CAPITAL GAINS AND DUTY

Schedule C

(Rule 5(10))

Notice in terms of Rule 5(10) of the Capital Gains Rules, 1993

Statement to be submitted by a transferor of shares where there is a transfer of controlling interest

Part 1 - Details of Transferor

Name	OneTwoThree Limited
Address	32, Qawra Road, Qawra, Malta
ROC No (companies only)	C 29585
Income Tax Registration No:	995599184

State the number of shares held by transferor immediately prior to the transfer:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	75,000	28 August 2015

Part 2 - Details of Company in which shares are being transferred

Company Name	Two Limited
Income Tax Registration No	994759602
Company year end	31 December
Date of incorporation	28 August 2015
ROC No	C 95950
Authorised share capital	75,000 ordinary shares with a nominal value of €1 each
Issued share capital	75,000 ordinary shares with a nominal value of €1 each



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

114

114

CASE STUDY 7

CAPITAL GAINS AND DUTY

State whether: (Yes or No)

- | | | |
|---|--|----------------------------------|
| a | The Company holds shares directly or indirectly in other companies.
(if Yes attach details) | <input type="text" value="No"/> |
| b | The Company or any companies specified in (a) above own immovable property at the date of the share transfer.
(if Yes attach details) | <input type="text" value="Yes"/> |
| c | An increase or reduction in the share capital of the company took place within eighteen months prior to the date of the share transfer.
(if Yes attach details) | <input type="text" value="No"/> |
| d | Any shares have been transferred by the transferor or a related party within eighteen months prior to the date of the share transfer.
(if Yes attach details) | <input type="text" value="No"/> |
| e | The company came into existence as a result of a restructuring.
(if Yes attach details specifying the date and whether a merger, division, etc) | <input type="text" value="No"/> |
| f | Such shares are held by a company whose shareholders, directly or indirectly, are all not resident in Malta. | <input type="text" value="No"/> |
| g | The transfer is a transfer to which art 5(3)(a) of the act applies. | <input type="text" value="No"/> |



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

115

115

CASE STUDY 7

CAPITAL GAINS AND DUTY

Part 3 - Details of share transfer

a	Date of share transfer	30 June 2022
b	Number of shares held at date of transfer	75,000 ordinary shares with a nominal value of €1 each
c	Number of shares transferred	75,000 ordinary shares with a nominal value of €1 each
d	Consideration for shares transferred	Cash consideration of €400,000

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	75,000	28 August 2015



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

116

116

CASE STUDY 7

CAPITAL GAINS AND DUTY

Part 4 - Computation of the market value of the shares transferred

The market value of the shares being transferred is to be determined as follows:

Market value of shares transferred / global transfer

Sec I : Determination of the % of the market value of the company as represented by such shares

	Type	Class	Nominal Value	Voting rights	Nom Value of shares transferred	Voting rights of shares transferred
Issued share capital	Ordinary	N/A	€75,000	75,000	€75,000	75,000
Total			€75,000 (A)	75,000 (B)	€75,000 (C)	75,000 (D)

Percentage of the Market Value of company

100%	100%
(C/A)	(D/B)

a State whether there has been a change in the issued share capital of the company during the period of eighteen months preceding the transfer.

No



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

117

117

CASE STUDY 7

CAPITAL GAINS AND DUTY

Although the legislation has been updated to reflect the amended formula for calculating the market value percentage being transferred, such amended formula has not yet been reflected in the Capital Gains Schedule C available to download from the Cfr's website. The below extract from the appendix to the Capital Gains Rules (S.L. 123.27) reflects the updated Schedule C applying the amended formula.

	Type	Class	Company total		Transferred shares		
			Nominal value	Voting rights	Nominal value	Voting rights	% of rights to profits distributable to ordinary shareholders
Issued share capital	Ordinary	N/A	€75,000	75,000	€75,000	75,000	100%
Total			€75,000 (A)	75,000 (B)	€75,000 (C)	75,000 (D)	100% (E)

Percentage of the market value of company

(XX)	C/A* .4 +	D/B* .2 +	E* .4
100%	(1.00 x 0.4)	(1.00 x 0.2)	(1.00 x 0.4)



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

118

118

CASE STUDY 7

CAPITAL GAINS AND DUTY

Sec II : Computation of Market value of company:

a	Total Net Asset Value of the company:	€179,000						
b	Market Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5.							
	<table border="1"> <thead> <tr> <th>Company</th><th>Income Tax no.</th><th>Market Value</th></tr> </thead> <tbody> <tr> <td>N/A</td><td>N/A</td><td>NIL</td></tr> </tbody> </table>	Company	Income Tax no.	Market Value	N/A	N/A	NIL	
Company	Income Tax no.	Market Value						
N/A	N/A	NIL						
	Deduct book value of shares held in the company (as stated in the financial statements)	NIL						
c	Total market value of immovable property as stated in the Architect's Valuation (as per Part 6) less Total book value of immovable property	€400,000 €240,000						
	Adjustment to the value of immovable property:	€160,000						
d	Value of goodwill: (as calculated in Sec IV below)	€121,600						
e	Deduct book value of the shares referred to in Rule 5(6)(d):	NIL						
f	Total adjusted market value of the company:	€460,600						

© Malta Institute of Taxation 2023

119

MALTA
INSTITUTE
OF TAXATION

119

CASE STUDY 7

CAPITAL GAINS AND DUTY

Sec III : Market value of shares transferred:

a	Adjusted market value of the company (Sec IIe)	€460,600
b	% of market value as represented by shares transferred or global transfer (higher of C/A, D/B or Z in Sec I)	100%
c	Market value of shares transferred or global transfer (a X b)	€460,600
d	Total value taken into account for the purpose of determining the chargeable gain arising from each of the relevant transactions preceding this transfer	NIL
e	Market value of shares transferred (c - d)	€460,600
f	Value of the consideration of shares transferred (Part 3d)	€400,000
g	Value to be taken into account for the purpose of calculating any gain or loss from the share transfer (higher of e or f)	€460,600

© Malta Institute of Taxation 2023

120

MALTA
INSTITUTE
OF TAXATION

120

CASE STUDY 7

CAPITAL GAINS AND DUTY

Sec IV : Calculation of the amount representing the value of goodwill:

- a Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:

Year ended 31 December

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Profit before tax:	€2,000	€54,000	€73,000	€66,000	€109,000	€304,000

Value of goodwill: €121,600

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

121

121

CASE STUDY 7

CAPITAL GAINS AND DUTY

- Duty:
- The market value of Two Limited is to be calculated in accordance with the Capital Gains Rules for duty purposes.
- Disallowed liabilities:

	Property	Non-Property
	€	€
Assets	240,000	133,000
Liabilities	-	(194,000)
	240,000	(61,000)



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

122

122

CASE STUDY 7
CAPITAL GAINS AND DUTY

- The rate of duty applicable in this case is €5 on every €100 or part thereof:
- €400,000 / €457,000 x 100 = 87.53%

Non-current assets of Two Limited	€
Property, plant and equipment	57,000
Investment property	400,000
	457,000



CASE STUDY 7
CAPITAL GAINS AND DUTY



SIXTH SCHEDULE
(Rule 11(3))

Notice in terms of Rule 11(3) of the Duty on Documents and Transfers Rules, 1993

Statement to be submitted by transferee in a transfer of company shares

PART 1 - DETAILS OF TRANSFEROR AND TRANSFEREE

TRANSFEROR

Name	Address	ROC No (companies only)	Income Tax Registration No
OneTwoThree Limited	32, Qawra Road, Qawra, Malta	C 29585	995599184

TRANSFEREE

Name	Address	ROC No (companies only)	Income Tax Registration No
Star Limited	93, Triq il-Bahar, St Pau's Bay	C 49596	992749554



CASE STUDY 7

CAPITAL GAINS AND DUTY

See the Office's Data Protection Policy on cfr.gov.mt

PART 2 - DETAILS OF COMPANY IN WHICH SHARES ARE BEING TRANSFERRED	
Company Name	Two Limited
Income Tax Registration No	994759602
Company year end	31 December
Date of incorporation	28 August 2015
ROC No	C 95950
Authorised share capital	75,000 ordinary shares with a nominal value of €1 each
Issued share capital	75,000 ordinary shares with a nominal value of €1 each
State whether: (Yes or No)	
a The Company holds shares directly or indirectly in other companies. (if Yes attach details)	No
b The Company or any companies specified in (a) above own immovable property at the date of the share transfer. (if Yes attach details)	Yes

www.cfr.gov.mt



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

125

125

CASE STUDY 7

CAPITAL GAINS AND DUTY

PART 3 - DETAILS OF SHARE TRANSFER				
a	Date of share transfer	30 June 2022		
b	Number of shares transferred	75,000 ordinary shares with a nominal value of €1 each		
c	Consideration for shares transferred	Cash consideration of €400,000		
Give details of the shares transferred.				
Type	Class	Votes per share	Nom Value per share	Number
Ordinary	N/A	1	€1	75,000

PART 4 - COMPUTATION OF THE REAL VALUE OF THE SHARES TRANSFERRED	
The real value of the shares being transferred is to be determined as follows:	
REAL VALUE OF SHARES TRANSFERRED	
Sec I: Determination of the % of the real value of the company as represented by such shares	
'A' is the percentage of the issued share capital represented by the nominal value of those shares.	100%
'B' is the percentage of the total voting rights in the company represented by the total voting rights attached to those shares.	100%
'C' is the percentage of the profits available for distribution to the ordinary shareholders represented by the profits available for distribution to the holder of those shares.	100%
'Y' represents the percentage to be determined.	$Y = (0.4 \times A) + (0.2 \times B) + (0.4 \times C)$
	100%

Page 02



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

126

126

CASE STUDY 7

CAPITAL GAINS AND DUTY

Sec II : Computation of real value of company in accordance with rule 5(6) and (7) of the Capital Gains Rules, 1993:		
a	Total Net Asset Value of the company:	€179,000
b	Real Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5 of the Capital Gains Rules, 1993:	
	Company	Income Tax no.
	N/A	N/A
		Real Value
		NIL
		NIL
	Deduct book value of shares held in the company (as stated in the financial statements)	NIL
c	Total real value of immovable property as stated in the Architect's Valuation (as per Part 6)	€400,000
	less Total book value of immovable property	(€240,000)
	Adjustment to the value of immovable property:	€160,000
d	Value of goodwill: (as calculated in Sec IV below)	€121,600
e	Deduct the book value of shares referred to in rule 5(6)(d) of the Capital Gains Rules, 1993:	NIL
f	Add Liabilities in excess of the value of all assets as determined in accordance with article 42(2)(c) of the Act:	€61,000
g	Total Adjusted real value of the Company	€521,600

www.cfr.gov.mt

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

127

127

CASE STUDY 7

CAPITAL GAINS AND DUTY

Sec III: Real value of shares transferred:	
a	Adjusted real value of the company (Sec IIg)
b	Percentage of real value as represented by shares transferred (higher of C/A, D/B in Sec I)
c	Real value of shares transferred (a X b)
d	Amount or value of the consideration for the shares transferred
e	Amount chargeable to duty (higher of c and d)
f	Rate of duty (€ 5 or € 2 for every one hundred euro or part thereof)
g	Amount of duty due (e X f)
Sec IV : Calculation of the Amount Representing the Value of Goodwill:	
a	Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:
	Year ended 31 December
	Profit before tax
	Year 1
	Year 2
	Year 3
	Year 4
	Year 5
	Total
	€2,000
	€54,000
	€73,000
	€66,000
	€109,000
	€304,000
	Value of goodwill:
	€121,600

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.

Page 03

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

128

128

CASE STUDY 7

CAPITAL GAINS AND DUTY

- **Transaction 4 – Capital Gains:**
- Final tax is calculated at the higher of the consideration or market value.
- In this case, the market value is higher (€280,000).
- The rate of tax is 5%:
- $€280,000 \times 5\% = €14,000$

Article 5A(5)(e) ITA:

When a transfer to which this article applies, made on or after the 1 January 2015, is a transfer of property not forming part of a project that is made not later than 5 years after the date of the acquisition thereof, the tax thereon shall be chargeable at the rate of 5% of the transfer value.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

129

129

CASE STUDY 7

CAPITAL GAINS AND DUTY

- **Duty:**
- Duty would be charged at the rate of €5 for every €100 on the higher of the market value and the consideration:
- $€280,000 \times 5\% = €14,000$

Article 32(1) DDTA:

There shall be charged on every document and on every judgement, decree or order of any court or other lawful authority, whereby any immovable or any real right over an immovable is transferred to any person, and on every declaration of transfers *causa mortis* in respect of persons from whom the transfer *causa mortis* originates who died on or after the 23 November 1999, a duty of €5 for every €100 or part thereof of the amount or value of the consideration for the transfer of such thing or of the value of such thing, whichever is the higher.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

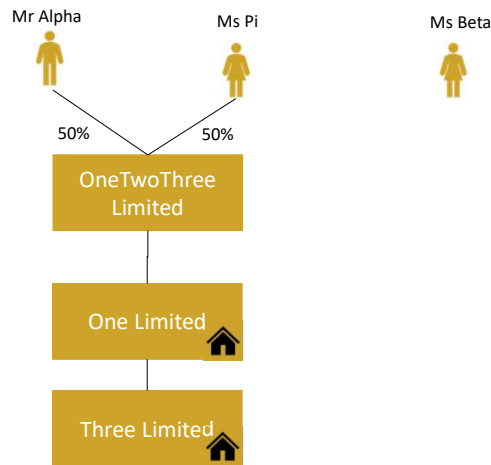
130

130

CASE STUDY 7

CAPITAL GAINS AND DUTY

- Transaction 5:



© Malta Institute of Taxation 2023



MALTA
INSTITUTE
OF TAXATION

131

131

CASE STUDY 7

CAPITAL GAINS AND DUTY

- **Capital Gains:**
- Ms Beta holds 50% of the issued share capital of OneTwoThree Limited.
- Therefore, this is a transfer of a controlling interest.
- Where there is a transfer of a controlling interest, the transfer value is the higher of the market value of the shares transferred and the consideration received.
- Schedule C must be submitted along with 7% provisional tax:
- $€409,600 \times 7\% = €28,672$



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

132

132

CASE STUDY 7

CAPITAL GAINS AND DUTY

- Since the Company transferred its shares in Three Limited to One Limited (Transaction 1), disposed of its shares in 567 Plc (Transaction 2) and disposed of its shares in Two Limited (Transaction 3), financial statements as at the date of the share transfer are required in order to calculate the market value.
- Since One Limited disposed of immovable property (Transaction 4), financial statements as at the date of the share transfer are required in order to calculate the market value.
- Three Limited did not dispose of any immovable property / shares from 31 December 2021 up to the date of the share transfer. Therefore, the financial statements as at 31 December 2021 are required in order to calculate the market value.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

133

133

CASE STUDY 7

CAPITAL GAINS AND DUTY

Market value of Three Limited	€
Net asset value as at 31 December 2021	186,000
Immovable property – book value	(130,000)
Immovable property – market value	215,000
Goodwill (€33,000 + €45,000 + €65,000 + €72,000 + (€20,000)) / 5 x 2	78,000
Market value of Three Limited	349,000
Market value of Three Limited attributable to One Limited (100%)	349,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

134

134

CASE STUDY 7

CAPITAL GAINS AND DUTY

Market value of One Limited	€
Net asset value as at 1 September 2022	206,500
Immovable property – book value	(200,000)
Immovable property – market value	275,000
Investment in Three Limited – book value	(200,000)
Investment in Three Limited – market value	349,000
Goodwill ((€2,000) + €6,000 + €70,000 + €89,000) / 4 x 2	81,500
Market value of One Limited	512,000
Market value of One Limited attributable to the Company (100%)	512,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

135

135

CASE STUDY 7

CAPITAL GAINS AND DUTY

Schedule C

(Rule 5(10))

Notice in terms of Rule 5(10) of the Capital Gains Rules, 1993

Statement to be submitted by a transferor of shares where there is a transfer of controlling interest

Part 1 - Details of Transferor

Name	Ms Beta
Address	29, Valley Road, Birkirkara
ROC No (companies only)	N/A
Income Tax Registration No:	395958M

State the number of shares held by transferor immediately prior to the transfer:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	50,000	1 August 2015

Part 2 - Details of Company in which shares are being transferred

Company Name	OneTwoThree Limited
Income Tax Registration No	995599184
Company year end	31 December
Date of Incorporation	1 August 2015
ROC No	C.29595
Authorised share capital	100,000 ordinary shares with a nominal value of €1 each
Issued share capital	100,000 ordinary shares with a nominal value of €1 each



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

136

136

CASE STUDY 7

CAPITAL GAINS AND DUTY

State whether: (Yes or No)

- | | | |
|---|---|----------------------------------|
| a | The Company holds shares directly or indirectly in other companies.
<i>(If Yes attach details)</i> | <input type="text" value="Yes"/> |
| b | The Company or any companies specified in (a) above own immovable property at the date of the share transfer.
<i>(If Yes attach details)</i> | <input type="text" value="Yes"/> |
| c | An increase or reduction in the share capital of the company took place within eighteen months prior to the date of the share transfer.
<i>(If Yes attach details)</i> | <input type="text" value="No"/> |
| d | Any shares have been transferred by the transferor or a related party within eighteen months prior to the date of the share transfer.
<i>(If Yes attach details)</i> | <input type="text" value="No"/> |
| e | The company came into existence as a result of a restructuring.
<i>(If Yes attach details specifying the date and whether a merger, division, etc)</i> | <input type="text" value="No"/> |
| f | Such shares are held by a company whose shareholders, directly or indirectly, are all not resident in Malta. | <input type="text" value="No"/> |
| g | The transfer is a transfer to which art 5(3)(a) of the act applies. | <input type="text" value="No"/> |



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

137

137

CASE STUDY 7

CAPITAL GAINS AND DUTY

Part 3 - Details of share transfer

a	Date of share transfer	1 September 2022
b	Number of shares held at date of transfer	50,000 ordinary shares with a nominal value of €1 each
c	Number of shares transferred	50,000 ordinary shares with a nominal value of €1 each
d	Consideration for shares transferred	Cash consideration of €400,000

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	50,000	1 August 2015



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

138

138

CASE STUDY 7

CAPITAL GAINS AND DUTY

Part 4 - Computation of the market value of the shares transferred

The market value of the shares being transferred is to be determined as follows:

Market value of shares transferred / global transfer

Sec I : Determination of the % of the market value of the company as represented by such shares

	Type	Class	Nominal Value	Voting rights	Nom Value of shares transferred	Voting rights of shares transferred
Issued share capital	Ordinary	N/A	€100,000	100,000	€50,000	50,000
Total			€100,000	100,000	€50,000	50,000
			(A)	(B)	(C)	(D)

Percentage of the Market Value of company

50%	50%
(C/A)	(D/B)

a State whether there has been a change in the issued share capital of the company during the period of eighteen months preceding the transfer.

No



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

139

139

CASE STUDY 7

CAPITAL GAINS AND DUTY

Although the legislation has been updated to reflect the amended formula for calculating the market value percentage being transferred, such amended formula has not yet been reflected in the Capital Gains Schedule C available to download from the Cfr's website. The below extract from the appendix to the Capital Gains Rules (S.L. 123.27) reflects the updated Schedule C applying the amended formula.

	Type	Class	Company total		Transferred shares		
			Nominal value	Voting rights	Nominal value	Voting rights	% of rights to profits distributable to ordinary shareholders
Issued share capital	Ordinary	N/A	€100,000	100,000	€50,000	50,000	50%
Total			€100,000	100,000	€50,000	50,000	50%
			(A)	(B)	(C)	(D)	(E)

Percentage of the market value of company

(XX)	$C/A \cdot 4 +$	$D/B \cdot 2 +$	$E \cdot 4$
50%	(0.50×0.4)	(0.50×0.2)	(0.50×0.4)



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

140

140

CASE STUDY 7

CAPITAL GAINS AND DUTY

Sec II : Computation of Market value of company:

a	Total Net Asset Value of the company:	€250,400						
b	Market Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5.							
	<table border="1"> <thead> <tr> <th>Company</th><th>Income Tax no.</th><th>Market Value</th></tr> </thead> <tbody> <tr> <td>One Limited</td><td>993758602</td><td>€512,000</td></tr> </tbody> </table>	Company	Income Tax no.	Market Value	One Limited	993758602	€512,000	€512,000
Company	Income Tax no.	Market Value						
One Limited	993758602	€512,000						
	Deduct book value of shares held in the company (as stated in the financial statements)	(€60,000)						
c	Total market value of immovable property as stated in the Architect's Valuation (as per Part 5) less Total book value of immovable property	NIL NIL						
	Adjustment to the value of immovable property:	NIL						
d	Value of goodwill: (as calculated in Sec IV below)	€116,800						
e	Deduct book value of the shares referred to in Rule 5(6)(d):	NIL						
f	Total adjusted market value of the company:	€819,200						

© Malta Institute of Taxation 2023

141

MALTA
INSTITUTE
OF TAXATION

141

CASE STUDY 7

CAPITAL GAINS AND DUTY

Sec III : Market value of shares transferred:

a	Adjusted market value of the company (Sec IIe)	€819,200
b	% of market value as represented by shares transferred or global transfer (higher of C/A, D/B or Z in Sec I)	50%
c	Market value of shares transferred or global transfer (a X b)	€409,600
d	Total value taken into account for the purpose of determining the chargeable gain arising from each of the relevant transactions preceding this transfer	NIL
e	Market value of shares transferred (c - d)	€409,600
f	Value of the consideration of shares transferred (Part 3d)	€400,000
g	Value to be taken into account for the purpose of calculating any gain or loss from the share transfer (higher of e or f)	€409,600

© Malta Institute of Taxation 2023

142

MALTA
INSTITUTE
OF TAXATION

142

CASE STUDY 7

CAPITAL GAINS AND DUTY

Sec IV : Calculation of the amount representing the value of goodwill:

- a Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:

Year ended 31 December

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Profit before tax	€105,000	€20,000	€177,000	€80,000	€120,000	€292,000
Value of goodwill:						€116,800

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

143

143

CASE STUDY 7

CAPITAL GAINS AND DUTY

- Duty:
- The market value of the Company is to be calculated in accordance with the Capital Gains Rules for duty purposes.
- Disallowed liabilities

	Property	Non-Property
	€	€
Assets	-	370,000
Liabilities	-	(119,600)
	-	250,400



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

144

144

CASE STUDY 7

CAPITAL GAINS AND DUTY

- The rate of duty applicable in this case is €2 on every €100 or part thereof:
- $\text{€0} / \text{€60,000} \times 100 = 0\%$

Non-current assets of the Company	€
Investment in One Limited	60,000
	60,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

145

145

CASE STUDY 7

CAPITAL GAINS AND DUTY

- One Limited does not constitute a property asset of the Company:
- $\text{€275,000} / \text{€555,000} \times 100 = 49.55\%$

Non-current assets of One Limited	€
Property, plant and equipment	80,000
Investment property	275,000
Investment in Three Limited	200,000
	555,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

146

146

CASE STUDY 7

CAPITAL GAINS AND DUTY

- Three Limited does not constitute a property asset of One Limited:
- $\text{€}215,000 / \text{€}545,000 \times 100 = 39.45\%$

Non-current assets of Three Limited	€
Property, plant and equipment	30,000
Investment property	215,000
Other investments	300,000
	545,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

147

147

CASE STUDY 7

CAPITAL GAINS AND DUTY



SIXTH SCHEDULE (Rule 11(3))

Notice in terms of Rule 11(3) of the Duty on Documents and Transfers Rules, 1993

Statement to be submitted by transferee in a transfer of company shares

PART 1 - DETAILS OF TRANSFEROR AND TRANSFEREE

TRANSFEROR			
Name	Address	ROC No (companies only)	Income Tax Registration No
Ms Beta	29, Valley Road, Birkirkara	N/A	395958M

TRANSFEREE			
Name	Address	ROC No (companies only)	Income Tax Registration No
Ms Pi	100, Main Street, Paola	N/A	829480M

Page 01



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

148

148

CASE STUDY 7

CAPITAL GAINS AND DUTY

See the Office's Data Protection Policy on cfr.gov.mt

PART 2 - DETAILS OF COMPANY IN WHICH SHARES ARE BEING TRANSFERRED	
Company Name	OneTwoThree Limited
Income Tax Registration No	995599184
Company year end	31 December
Date of incorporation	1 August 2015
ROC No	C 29585
Authorised share capital	100,000 ordinary shares with a nominal value of €1 each
Issued share capital	100,000 ordinary shares with a nominal value of €1 each
State whether: (Yes or No)	
a The Company holds shares directly or indirectly in other companies. (if Yes attach details)	Yes
b The Company or any companies specified in (a) above own immovable property at the date of the share transfer. (if Yes attach details)	Yes

www.cfr.gov.mt

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

149

149

CASE STUDY 7

CAPITAL GAINS AND DUTY

PART 3 - DETAILS OF SHARE TRANSFER				
a Date of share transfer	1 September 2022			
b Number of shares transferred	50,000 ordinary shares with a nominal value of €1 each			
c Consideration for shares transferred	Cash consideration of €400,000			

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number
Ordinary	N/A	1	€1	50,000

PART 4 - COMPUTATION OF THE REAL VALUE OF THE SHARES TRANSFERRED	
The real value of the shares being transferred is to be determined as follows:	
REAL VALUE OF SHARES TRANSFERRED	
Sec 1: Determination of the % of the real value of the company as represented by such shares	
'A' is the percentage of the issued share capital represented by the nominal value of those shares.	50%
'B' is the percentage of the total voting rights in the company represented by the total voting rights attached to those shares.	50%
'C' is the percentage of the profits available for distribution to the ordinary shareholders represented by the profits available for distribution to the holder of those shares.	50%
'Y' represents the percentage to be determined.	Y=(0.4 x A) + (0.2 x B) + (0.4 x C)
	50%

Page 02

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

150

150

CASE STUDY 7

CAPITAL GAINS AND DUTY

Sec II : Computation of real value of company in accordance with rule 5(6) and (7) of the Capital Gains Rules, 1993:		
a	Total Net Asset Value of the company:	€250,400
b	Real Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5 of the Capital Gains Rules, 1993:	
	Company	Income Tax no.
	One Limited	993758602
		Real Value
		€512,000
		€512,000
	Deduct book value of shares held in the company (as stated in the financial statements)	(€60,000)
c	Total real value of immovable property as stated in the Architect's Valuation (as per Part 6) less Total book value of immovable property	NIL
	Adjustment to the value of immovable property:	NIL
d	Value of goodwill: (as calculated in Sec IV below)	€116,800
e	Deduct the book value of shares referred to in rule 5(6)(d) of the Capital Gains Rules, 1993:	NIL
f	Add Liabilities in excess of the value of all assets as determined in accordance with article 42(2)(c) of the Act:	NIL
g	Total Adjusted real value of the Company	€819,200

© Malta Institute of Taxation 2023

151

151

CASE STUDY 7

CAPITAL GAINS AND DUTY

Sec III : Real value of shares transferred:						
a	Adjusted real value of the company (Sec IIg)	€819,200				
b	Percentage of real value as represented by shares transferred (higher of C/A, D/B in Sec I)	50%				
c	Real value of shares transferred (a X b)	€409,600				
d	Amount or value of the consideration for the shares transferred	€400,000				
e	Amount chargeable to duty (higher of c and d)	€409,600				
f	Rate of duty (€ 5 or € 2 for every one hundred euro or part thereof)	€2				
g	Amount of duty due (e X f)	€8,192				
Sec IV : Calculation of the Amount Representing the Value of Goodwill:						
a	Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:					
	Year ended	31 December				
	Profit before tax					
	Year 1	Year 2	Year 3	Year 4	Year 5	Total
	(€105,000)	€20,000	€177,000	€80,000	€120,000	€292,000
	Value of goodwill:					€116,800

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.

© Malta Institute of Taxation 2023

152

152

CASE STUDY 7

CAPITAL GAINS AND DUTY

- **De-grouping considerations:**
- The transfer of shares by Ms Beta gives rise to a change in the beneficial owners of One Limited, subsequent to a transfer of shares in Three Limited which was exempt for Malta income tax purposes in terms of the intra-group exemption (Transaction 1).
- Therefore, the Malta income tax due on Transaction 1 (which transaction was previously exempt) must now be calculated by reference to the balance sheet of Three Limited as at the date of Transaction 1 (31 January 2022).
- No Malta duty considerations arise (upon a change in the original group of companies, there is no clawback for Malta duty purposes similar to the de-grouping provisions that apply to intra-group exempt capital gains).



© Malta Institute of Taxation 2023

153

153

CASE STUDY 8

CAPITAL GAINS AND DUTY

© Malta Institute of Taxation 2023

154

154

CASE STUDY 8

CAPITAL GAINS AND DUTY

- Black Limited is a company incorporated in Malta on 1 March 2010, with an issued share capital of 150,000 shares having a nominal value of €1 each. The shareholding of Black Limited has not changed since incorporation.
- Mr White holds 70% of the issued share capital of Black Limited. Mr Grey holds 20% of the share capital of Black Limited and Ms Grey, his wife, holds the remaining 10% of the share capital of Black Limited. Mr White is not related to Mr Grey and / or Ms Grey.
- All shares in Black Limited rank equally in terms of voting rights and rights to profits. However, only Mr White may be appointed as a director or nominate / appoint or withhold the nomination / appointment of a director of Black Limited.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

155

155

CASE STUDY 8

CAPITAL GAINS AND DUTY

- Black Limited owns 60% of the share capital of Blue Limited, a Maltese limited liability company.
- Additionally, Black Limited holds 5% of the share capital of Purple Limited, a Maltese public company whose shares are listed on the Malta Stock Exchange. Black Limited's investment in Purple Limited represents an investment of a capital nature.
- Neither Black Limited nor Blue Limited have distributed any dividends since incorporation.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

156

156

CASE STUDY 8

CAPITAL GAINS AND DUTY

- Black Limited also owns two immovable properties:
 - Property 1 is situated in an urban conservation area and was acquired at a cost of €350,000 in 2014; and
 - Property 2 is not situated in an urban conservation area and was acquired at a cost of €400,000 in 2015.
- Black Limited took out a bank loan amounting to €400,000 to finance the acquisition of Property 2.
- As at 31 December 2022, Property 1 had a market value of €650,000 and Property 2 had a market value of €800,000.
- As at 31 March 2023, Property 1 had a market value of €670,000 and Property 2 had a market value of €850,000.



MALTA
INSTITUTE
OF TAXATION

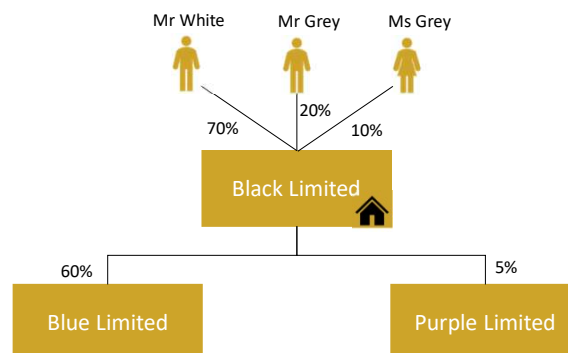
© Malta Institute of Taxation 2023

157

157

CASE STUDY 8

CAPITAL GAINS AND DUTY



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

158

158

CASE STUDY 8

CAPITAL GAINS AND DUTY

- Black Limited is considering carrying out the following transactions after 30 April 2023 but before 31 December 2023:
 - 1) Transfer of shares in Purple Limited to a third party for a consideration of €50,000.
 - 2) Transfer of Property 1 and Property 2 to Mr B, a third party, for a consideration of €1,500,000 (€700,000 for Property 1 and €800,000 for Property 2). As at the date of transfer, Property 1 is expected to have a market value of €650,000 and Property 2 is expected to have a market value of €900,000.
- Advise Black Limited on the relevant Malta income tax and duty considerations in relation to each of the above transactions.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

159

159

CASE STUDY 8

CAPITAL GAINS AND DUTY

- 3) In 2024, Mr B plans to apply for a permit to convert Property 1 (acquired from Black Limited pursuant to Transaction 2) into multiple apartments. Advise Mr B on the relevant Malta income tax and duty considerations applicable to this plan.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

160

160

CASE STUDY 8

CAPITAL GAINS AND DUTY

- 4) On 1 January 2023, Ms Grey transferred her holding in Black Limited to a third party for a consideration of €140,000.
 - 5) On 1 April 2023, Mr Grey transferred his holding in Black Limited to the same third party for a consideration of €240,000.
- Analyse any Malta income tax and duty considerations applicable to the above transfers of shares and, if required, prepare the relevant workings and appropriate tax and duty schedules by reference to the financial information on the following slides. It is relevant to note that:
 - The financial assets are recorded in the balance sheets of each company at cost.
 - Unless otherwise stated, all bank loans held by the group entities relate to the respective companies trading activities.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

161

161

CASE STUDY 8

CAPITAL GAINS AND DUTY

- The profit before tax of each company for the past 5 years is as follows:

	Black Limited	Blue Limited	Purple Limited
	€	€	€
2018	20,000	60,000	400,000
2019	25,000	78,000	430,000
2020	26,000	80,000	380,000
2021	36,000	95,000	370,000
2022	40,000	100,000	500,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

162

162

Balance sheets as at 31 December 2022	Black Limited	Blue Limited	Purple Limited
	€	€	€
Non-Current Assets			
Property, plant and equipment	-	660,000	2,450,000
Investment property	750,000	-	-
Investment in Purple Limited	50,000	-	-
Investment in Blue Limited	120,000	-	-
	920,000	660,000	2,450,000
Current Assets			
Trade receivables	25,000	160,000	540,000
Cash	10,000	46,000	300,000
Total Assets	955,000	866,000	3,290,000
Liabilities			
Trade payables	255,000	216,000	90,000
Bank loans	400,000	-	-
Total Liabilities	655,000	216,000	90,000
Equity			
Share capital	150,000	200,000	1,000,000
Retained earnings	150,000	450,000	2,200,000
Total Equity	300,000	650,000	3,200,000

© Malta Institute of Taxation 2023

163

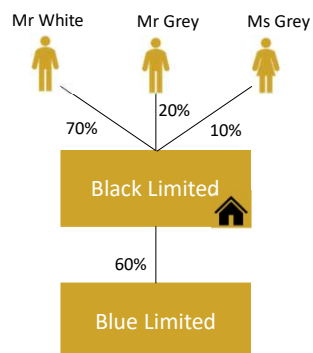
MALTA
INSTITUTE
OF TAXATION

163

CASE STUDY 8

CAPITAL GAINS AND DUTY

- Transaction 1:

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

164

164

CASE STUDY 8

CAPITAL GAINS AND DUTY

- **Capital Gains:**
- Given that the shares transferred are listed on an approved stock exchange, no Malta income tax liability should arise.

Article 5(6)(b) ITA:

The provisions of article 5(1)(a)(ii) ITA shall not apply to gains or profits relating to:
(b) Transfer of shares listed, or in consequence of a listing, on a stock exchange recognised by the Commissioner for the purpose of this provision not being securities in a collective investment scheme



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

165

165

CASE STUDY 8

CAPITAL GAINS AND DUTY

- **Duty:**
- Given that the shares transferred are listed on an approved stock exchange, no duty liability should arise.

Article 50 Financial Markets Act, chapter 345 of the laws of Malta:

No duty shall be payable in respect of any transfer of any financial instruments of a quoted company, or the transfer of any financial instruments of the Government or any body corporate established by law, where such transfer is made either on a regulated market or outside the regulated market on which they are listed in terms of article 45 or on a regulated multilateral system or an equivalent regulated market or multilateral system in a non-Member State or non-EEA State.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

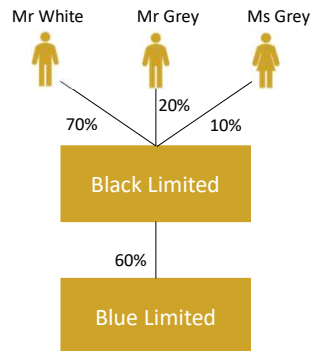
166

166

CASE STUDY 8

CAPITAL GAINS AND DUTY

- Transaction 2:



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

167

167

CASE STUDY 8

CAPITAL GAINS AND DUTY

- Property 1 – Capital Gains and Duty:
- Transfer value is the higher of consideration (€700,000) and market value (€650,000). In this case, the consideration is higher.
- Given that the property is situated in an urban conservation area (and assuming that all other relevant criteria are satisfied), no Malta income tax or duty liability should arise upon the transfer of Property 1 since the transfer value is less than €750,000.

Rule 3(1) S.L. 123.203 / S.L. 364.19:

No income tax and no duty on documents and transfers shall be payable on the first €750,000 of the transfer value of any transfer to which rule 4 or rule 5 applies that is made on or after 12 October 2021 but not later than 31 December 2024



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

168

168

CASE STUDY 8

CAPITAL GAINS AND DUTY

- **Property 2 – Capital Gains:**
- Transfer value is the higher of consideration (€800,000) and market value (€900,000). In this case, the market value is higher.
- The rate of tax is 8% on the transfer value:
- $€900,000 \times 8\% = €72,000$

Article 5A(5)(a) ITA:

In the case of transfers of property made on or after the 1 January 2015, other than property forming part of a project and property situated within a special designated area, the tax on a transfer to which article 5A ITA applies shall be chargeable at the rate of 8% of the transfer value.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

169

169

CASE STUDY 8

CAPITAL GAINS AND DUTY

- **Property 2 – Duty:**
- Duty would be charged at the rate of €5 for every €100 or part thereof on the higher of the market value and the consideration:
- $€900,000 \times 5\% = €45,000$

Article 32(1) DDTA:

There shall be charged on every document and on every judgement, decree or order of any court or other lawful authority, whereby any immovable or any real right over an immovable is transferred to any person, and on every declaration of transfers *causa mortis* in respect of persons from whom the transfer *causa mortis* originates who died on or after the 23 November 1999, a duty of €5 for every €100 or part thereof of the amount or value of the consideration for the transfer of such thing or of the value of such thing, whichever is the higher.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

170

170

CASE STUDY 8

CAPITAL GAINS AND DUTY

- **Transaction 3:**
- Should Mr B demolish the property / carry out structural alterations on the property, then the income tax and duty that were previously relieved upon his acquisition of the property will become due (he will be liable for both the income tax and duty).

Rule 6 S.L. 123.203 / 364.19:

The relief from income tax and from duty on documents and transfers mentioned in rule 3 shall be subject to the condition that, at any date after the transfer, but not after the date when the property is transferred again *inter vivos* or *causa mortis*:

- The property is not demolished; and
- The property is not subjected to structural alterations or additions as a result of which it is divided into more transferable units that comprised the property at the time of the transfer; and
- No permit is issued by the Planning Authority, upon an application made by the owner who benefited from the said relief, for the demolition of the property or for works described above; and
- No transfer is made of any divided part of that property.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

171

171

CASE STUDY 8

CAPITAL GAINS AND DUTY

- **Capital Gains:**
- Transfer value is the higher of consideration (€700,000) and market value (€650,000). In this case, the consideration is higher.
- The rate of tax is 8% on the transfer value:
- €700,000 x 8% = €56,000

Article 5A(5)(a) ITA:

In the case of transfers of property made on or after the 1 January 2015, other than property forming part of a project and property situated within a special designated area, the tax on a transfer to which article 5A ITA applies shall be chargeable at the rate of 8% of the transfer value.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

172

172

CASE STUDY 8

CAPITAL GAINS AND DUTY

- **Duty:**
- Duty would be charged at the rate of €5 for every €100 or part thereof on the higher of the market value and the consideration:
- $€700,000 \times 5\% = €35,000$

Article 32(1) DDTA:

There shall be charged on every document and on every judgement, decree or order of any court or other lawful authority, whereby any immovable or any real right over an immovable is transferred to any person, and on every declaration of transfers *causa mortis* in respect of persons from whom the transfer *causa mortis* originates who died on or after the 23 November 1999, a duty of €5 for every €100 or part thereof of the amount or value of the consideration for the transfer of such thing or of the value of such thing, whichever is the higher.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

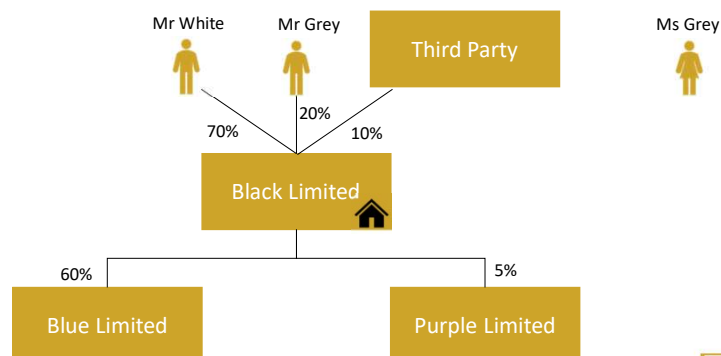
173

173

CASE STUDY 8

CAPITAL GAINS AND DUTY

- **Transaction 4:**



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

174

174

CASE STUDY 8

CAPITAL GAINS AND DUTY

- **Capital Gains:**
- Ms Grey holds 10% of the issued share capital of Black Limited.
- Therefore, this is a transfer of a non-controlling interest.
- Therefore, the transfer value is the consideration received, i.e. €140,000.
- Schedule D must be submitted along with 7% provisional tax:
- €140,000 x 7% = €9,800



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

175

175

CASE STUDY 8

CAPITAL GAINS AND DUTY

Schedule D

(Rule 5(10))

Notice in terms of Rule 5(10) of the Capital Gains Rules, 1993

Statement to be submitted by a transferor of shares where there is no transfer of controlling interest

Part 1 - Details of Transferor

Name	Ms Grey
Address	84, Triq il-Knisja, Siggiewi
ROC No (companies only)	N/A
Income Tax Registration No:	952673M

State the number of shares held by transferor immediately prior to the transfer:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	15,000	1 March 2010

Part 2 - Details of Company in which shares are being transferred

Company Name	Black Limited
Income Tax Registration No	994859169
Company year end	31 December
Date of incorporation	1 March 2010
ROC No	C 65838
Authorised share capital	150,000 ordinary shares with a nominal value of €1 each
Issued share capital	150,000 ordinary shares with a nominal value of €1 each



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

176

176

CASE STUDY 8
CAPITAL GAINS AND DUTY

Part 3 - Details of share transfer

Date of share transfer	1 January 2023
Number of shares held at date of transfer	15,000 ordinary shares with a nominal value of €1 each
Number of shares transferred	15,000 ordinary shares with a nominal value of €1 each
Consideration being paid for shares transferred	Cash consideration of €140,000

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	15,000	1 March 2010



© Malta Institute of Taxation 2023

177

177

CASE STUDY 8
CAPITAL GAINS AND DUTY

- Duty:
- The market value of Black Limited is to be calculated in accordance with the Capital Gains Rules for duty purposes.
- Disallowed liabilities:

	Property	Non-Property
	€	€
Assets	750,000	205,000
Liabilities	(400,000)	(255,000)
	350,000	(50,000)



© Malta Institute of Taxation 2023

178

178

CASE STUDY 8

CAPITAL GAINS AND DUTY

- The market value of the company is calculated by reference to the financial statements as at the end of the financial year preceding that in which the transfer is made – in this case, 31 December 2022.
- No immovable property / shares were transferred by the company from 31 December 2022 up to date of share transfer.
- The book value of Black Limited's investment in Purple Limited is not replaced with the market value of such shares since: (i) Purple Limited is listed on an approved stock exchange; and (ii) Black Limited's holding represents less than 10% of the issued share capital of Purple Limited.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

179

179

CASE STUDY 8

CAPITAL GAINS AND DUTY

Market value of Blue Limited	€
Net asset value as at 31 December 2022	650,000
Goodwill (€60,000 + €78,000 + €80,000 + €95,000 + €100,000) / 5 x 2	165,200
Market value of Blue Limited	815,200
Market value of Blue Limited attributable to Black Limited (60%)	489,120



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

180

180

CASE STUDY 8
CAPITAL GAINS AND DUTY

- The rate of duty applicable in this case is €5 on every €100 or part thereof.
- $\text{€1,450,000} / \text{€1,620,000} \times 100 = 89.51\%$

Non-current assets of Black Limited	€
Investment property (€650,000 + €800,000)	1,450,000
Investment in Blue Limited	120,000
Investment in Purple Limited	50,000
	1,620,000



CASE STUDY 8
CAPITAL GAINS AND DUTY



SIXTH SCHEDULE
(Rule 11(3))

Notice in terms of Rule 11(3) of the Duty on Documents and Transfers Rules, 1993

Statement to be submitted by transferee in a transfer of company shares

PART 1 - DETAILS OF TRANSFEROR AND TRANSFEREE

TRANSFEROR			
Name	Address	ROC No (companies only)	Income Tax Registration No
Ms Grey	84, Triq il-Knisja, Siggiewi	N/A	952673M
TRANSFEREE			
Name	Address	ROC No (companies only)	Income Tax Registration No
Third party	N/A	N/A	N/A



CASE STUDY 8

CAPITAL GAINS AND DUTY

See the Office's Data Protection Policy on cfr.gov.mt

PART 2 - DETAILS OF COMPANY IN WHICH SHARES ARE BEING TRANSFERRED

Company Name	Black Limited
Income Tax Registration No	994859169
Company year end	31 December
Date of incorporation	1 March 2010
ROC No	C 65838
Authorised share capital	150,000 ordinary shares with a nominal value of €1 each
Issued share capital	150,000 ordinary shares with a nominal value of €1 each

State whether: (Yes or No)

a	The Company holds shares directly or indirectly in other companies. (if Yes attach details)	Yes
b	The Company or any companies specified in (a) above own immovable property at the date of the share transfer. (if Yes attach details)	Yes

www.cfr.gov.mt

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

183

183

CASE STUDY 8

CAPITAL GAINS AND DUTY

PART 3 - DETAILS OF SHARE TRANSFER

a	Date of share transfer	1 January 2023
b	Number of shares transferred	15,000 ordinary shares with a nominal value of €1 each
c	Consideration for shares transferred	Cash consideration of €140,000

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number
Ordinary	N/A	1	€1	15,000

Page 02

PART 4 - COMPUTATION OF THE REAL VALUE OF THE SHARES TRANSFERRED

The real value of the shares being transferred is to be determined as follows:

REAL VALUE OF SHARES TRANSFERRED

Sec 1: Determination of the % of the real value of the company as represented by such shares.

'A' is the percentage of the issued share capital represented by the nominal value of those shares.

10%

'B' is the percentage of the total voting rights in the company represented by the total voting rights attached to those shares.

10%

'C' is the percentage of the profits available for distribution to the ordinary shareholders represented by the profits available for distribution to the holder of those shares.

10%

'Y' represents the percentage to be determined.

 $Y = (0.4 \times A) + (0.2 \times B) + (0.4 \times C)$

10%

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

184

184

CASE STUDY 8

CAPITAL GAINS AND DUTY

Sec II: Computation of real value of company in accordance with rule 5(6) and (7) of the Capital Gains Rules, 1993:		
a	Total Net Asset Value of the company:	€300,000
b	Real Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5 of the Capital Gains Rules, 1993:	
	Company	Income Tax no.
	Blue Limited	993058295
		Real Value
		€489,120
		€489,120
	Deduct book value of shares held in the company (as stated in the financial statements)	(€120,000)
c	Total real value of immovable property as stated in the Architect's Valuation (as per Part 6)	€1,450,000
	less Total book value of immovable property	(€750,000)
	Adjustment to the value of immovable property:	€700,000
d	Value of goodwill: (as calculated in Sec IV below)	€58,800
e	Deduct the book value of shares referred to in rule 5(6)(d) of the Capital Gains Rules, 1993:	NIL
f	Add Liabilities in excess of the value of all assets as determined in accordance with article 42(2)(c) of the Act:	€50,000
g	Total Adjusted real value of the Company	€1,477,920

www.ift.gov.mt

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

185

185

CASE STUDY 8

CAPITAL GAINS AND DUTY

Sec III: Real value of shares transferred:	
a	Adjusted real value of the company (Sec IIg)
b	Percentage of real value as represented by shares transferred (higher of C/A, D/B in Sec I)
c	Real value of shares transferred (a X b)
d	Amount or value of the consideration for the shares transferred
e	Amount chargeable to duty (higher of c and d)
f	Rate of duty (€ 5 or € 2 for every one hundred euro or part thereof)
g	Amount of duty due (e X f)
Sec IV: Calculation of the Amount Representing the Value of Goodwill:	
a	Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:
	Year ended 31 December
	Profit before tax
	Year 1
	Year 2
	Year 3
	Year 4
	Year 5
	Total
	€20,000
	€25,000
	€26,000
	€36,000
	€40,000
	€147,000
	Value of goodwill:
	€58,800
Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.	

Page 03

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

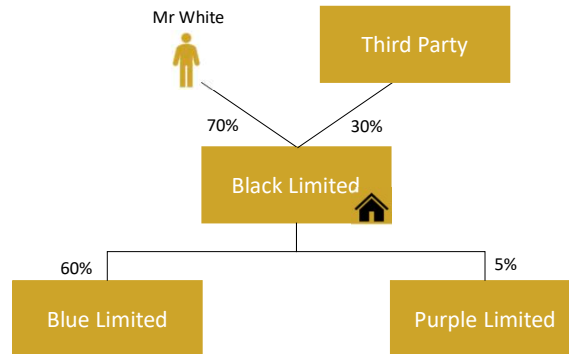
186

186

CASE STUDY 8

CAPITAL GAINS AND DUTY

- Transaction 5:



Ms Grey Mr Grey



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

187

187

CASE STUDY 8

CAPITAL GAINS AND DUTY

- **Capital Gains:**
- Mr Grey holds 20% of the issued share capital of Black Limited. Therefore, this is *prima facie* a transfer of a non-controlling interest.
- However, Ms Grey (a related person of Mr Grey) transferred her holding of 10% within a period of 18 months from the transfer of Mr Grey. Together, Mr Grey and Ms Grey held 30% of the issued share capital of Black Limited. Therefore, the transfer by Mr Grey is a transfer of a controlling interest in terms of the global transfer rules.
- Where there is a transfer of a controlling interest, the transfer value is the higher of the market value of the shares transferred and the consideration received.
- Schedule C must be submitted along with 7% provisional tax:
- $€309,376 \times 7\% = €21,656.32$



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

188

188

CASE STUDY 8

CAPITAL GAINS AND DUTY

Schedule C

(Rule 5(10))

Notice in terms of Rule 5(10) of the Capital Gains Rules, 1993

Statement to be submitted by a transferor of shares where there is a transfer of controlling interest

Part 1 - Details of Transferor

Name	Mr Grey
Address	84, Triq il-Knisja, Siggiewi
ROC No (companies only)	N/A
Income Tax Registration No.	305769M

State the number of shares held by transferor immediately prior to the transfer:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	30,000	1 March 2010

Part 2 - Details of Company in which shares are being transferred

Company Name	Black Limited
Income Tax Registration No	994859169
Company year end	31 December
Date of incorporation	1 March 2010
ROC No	C 65838
Authorised share capital	150,000 ordinary shares with a nominal value of €1 each
Issued share capital	150,000 ordinary shares with a nominal value of €1 each

© Malta Institute of Taxation 2023

MALTA
INSTITUTE
OF TAXATION

189

189

CASE STUDY 8

CAPITAL GAINS AND DUTY

State whether: (Yes or No)

- | | | |
|---|--|----------------------------------|
| a | The Company holds shares directly or indirectly in other companies.
(if Yes attach details) | <input type="text" value="Yes"/> |
| b | The Company or any companies specified in (a) above own immovable property at the date of the share transfer.
(if Yes attach details) | <input type="text" value="Yes"/> |
| c | An increase or reduction in the share capital of the company took place within eighteen months prior to the date of the share transfer.
(if Yes attach details) | <input type="text" value="No"/> |
| d | Any shares have been transferred by the transferor or a related party within eighteen months prior to the date of the share transfer.
(if Yes attach details) | <input type="text" value="Yes"/> |
| e | The company came into existence as a result of a restructuring.
(if Yes attach details specifying the date and whether a merger, division, etc) | <input type="text" value="No"/> |
| f | Such shares are held by a company whose shareholders, directly or indirectly, are all not resident in Malta. | <input type="text" value="No"/> |
| g | The transfer is a transfer to which art 5(3)(a) of the act applies. | <input type="text" value="No"/> |

© Malta Institute of Taxation 2023

MALTA
INSTITUTE
OF TAXATION

190

190

CASE STUDY 8

CAPITAL GAINS AND DUTY

Part 3 - Details of share transfer

a	Date of share transfer	1 April 2023
b	Number of shares held at date of transfer	30,000 ordinary shares with a nominal value of €1 each
c	Number of shares transferred	30,000 ordinary shares with a nominal value of €1 each
d	Consideration for shares transferred	Cash consideration of €240,000

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number	Date of acquisition
Ordinary	N/A	1	€1	30,000	1 March 2010



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

191

191

CASE STUDY 8

CAPITAL GAINS AND DUTY

Part 4 - Computation of the market value of the shares transferred

The market value of the shares being transferred is to be determined as follows:

Market value of shares transferred / global transfer

Sec I : Determination of the % of the market value of the company as represented by such shares

	Type	Class	Nominal Value	Voting rights	Nom Value of shares transferred	Voting rights of shares transferred
Issued share capital	Ordinary	N/A	€150,000	150,000	€45,000	45,000
Total			€150,000 (A)	150,000 (B)	€45,000 (C)	45,000 (D)

Percentage of the Market Value of company

30% (C/A)	30% (D/B)
--------------	--------------

a State whether there has been a change in the issued share capital of the company during the period of eighteen months preceding the transfer.

No



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

192

192

CASE STUDY 8

CAPITAL GAINS AND DUTY

Although the legislation has been updated to reflect the amended formula for calculating the market value percentage being transferred, such amended formula has not yet been reflected in the Capital Gains Schedule C available to download from the CfR's website. The below extract from the appendix to the Capital Gains Rules (S.L. 123.27) reflects the updated Schedule C applying the amended formula.

	Type	Class	Company total		Transferred shares		
			Nominal value	Voting rights	Nominal value	Voting rights	% of rights to profits distributable to ordinary shareholders
Issued share capital	Ordinary	N/A	€150,000	150,000	€45,000	45,000	30%
Total			€150,000	150,000	€45,000	45,000	30%
			(A)	(B)	(C)	(D)	(E)

Percentage of the market value of company	(XX)	C/A* 4 +	D/B* 2 +	E* 4
	30%	(0.30 x 0.4)	(0.30 x 0.2)	(0.30 x 0.4)



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

193

193

CASE STUDY 8

CAPITAL GAINS AND DUTY

Sec II : Computation of Market value of company:								
a	Total Net Asset Value of the company:	€300,000						
b	Market Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5.							
	<table> <tr> <th>Company</th><th>Income Tax no.</th><th>Market Value</th></tr> <tr> <td>Blue Limited</td><td>993058295</td><td>€489,120</td></tr> </table>	Company	Income Tax no.	Market Value	Blue Limited	993058295	€489,120	€489,120
Company	Income Tax no.	Market Value						
Blue Limited	993058295	€489,120						
	Deduct book value of shares held in the company (as stated in the financial statements)	(€120,000)						
c	Total market value of immovable property as stated in the Architect's Valuation (as per Part 6)	€1,520,000						
	less Total book value of immovable property	(€750,000)						
	Adjustment to the value of immovable property:	€770,000						
d	Value of goodwill: (as calculated in Sec IV below)	€58,800						
e	Deduct book value of the shares referred to in Rule 5(6)(d):	NIL						
f	Total adjusted market value of the company:	€1,497,920						



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

194

194

CASE STUDY 8

CAPITAL GAINS AND DUTY

Sec III : Market value of shares transferred:

a	Adjusted market value of the company (Sec IIe)	€1,497,920
b	% of market value as represented by shares transferred or global transfer (higher of C/A, D/B or Z in Sec I)	30%
c	Market value of shares transferred or global transfer (a X b)	€449,376
d	Total value taken into account for the purpose of determining the chargeable gain arising from each of the relevant transactions preceding this transfer	(€140,000)
e	Market value of shares transferred (c - d)	€309,376
f	Value of the consideration of shares transferred (Part 3a)	€240,000
g	Value to be taken into account for the purpose of calculating any gain or loss from the share transfer (higher of e or f)	€309,376



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

195

195

CASE STUDY 8

CAPITAL GAINS AND DUTY

Sec IV : Calculation of the amount representing the value of goodwill:

- a Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:

Year ended 31 December

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Profit before tax	€20,000	€25,000	€28,000	€36,000	€40,000	€147,000

Value of goodwill:

€58,800

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

196

196

CASE STUDY 8

CAPITAL GAINS AND DUTY

- **Duty:**
- The market value of Black Limited is to be calculated in accordance with the Capital Gains Rules for duty purposes.
- The rate of duty applicable in this case is €5 on every €100 or part thereof:
- $€1,520,000 / €1,690,000 \times 100 = 89.94\%$

Non-current assets of Black Limited	€
Investment property (€670,000 + €850,000)	1,520,000
Investment in Blue Limited	120,000
Investment in Purple Limited	50,000
	1,690,000



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

197

197

CASE STUDY 8

CAPITAL GAINS AND DUTY



OFFICE OF
THE COMMISSIONER
FOR REVENUE

SIXTH SCHEDULE (Rule 11(3))

Notice in terms of Rule 11(3) of the Duty on Documents and Transfers Rules, 1993

Statement to be submitted by transferee in a transfer of company shares

PART 1 - DETAILS OF TRANSFEROR AND TRANSFEREE

TRANSFEROR			
Name	Address	ROC No (companies only)	Income Tax Registration No
Mr Grey	84, Triq il-Knisja, Siggiewi	N/A	305769M

TRANSFEREE			
Name	Address	ROC No (companies only)	Income Tax Registration No
Third party	N/A	N/A	N/A

Page 01



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

198

198

CASE STUDY 8

CAPITAL GAINS AND DUTY

See the Office's Data Protection Policy on ctf.gov.mt

PART 2 - DETAILS OF COMPANY IN WHICH SHARES ARE BEING TRANSFERRED	
Company Name	Black Limited
Income Tax Registration No	994859169
Company year end	31 December
Date of incorporation	1 March 2010
ROC No	C 65838
Authorised share capital	150,000 ordinary shares with a nominal value of €1 each
Issued share capital	150,000 ordinary shares with a nominal value of €1 each
State whether: (Yes or No)	
a The Company holds shares directly or indirectly in other companies. (if Yes attach details)	Yes
b The Company or any companies specified in (a) above own immovable property at the date of the share transfer. (if Yes attach details)	Yes

www.ctf.gov.mt



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

199

199

CASE STUDY 8

CAPITAL GAINS AND DUTY

Page 02

PART 3 - DETAILS OF SHARE TRANSFER	
a Date of share transfer	1 April 2023
b Number of shares transferred	30,000 ordinary shares with a nominal value of €1 each
c Consideration for shares transferred	Cash consideration of €240,000

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number
Ordinary	N/A	1	€1	30,000

PART 4 - COMPUTATION OF THE REAL VALUE OF THE SHARES TRANSFERRED

The real value of the shares being transferred is to be determined as follows:

REAL VALUE OF SHARES TRANSFERRED	
Sec 1: Determination of the % of the real value of the company as represented by such shares	
'A' is the percentage of the issued share capital represented by the nominal value of those shares.	20%
'B' is the percentage of the total voting rights in the company represented by the total voting rights attached to those shares.	20%
'C' is the percentage of the profits available for distribution to the ordinary shareholders represented by the profits available for distribution to the holder of those shares.	20%
'Y' represents the percentage to be determined.	20%

$Y = (0.4 \times A) + (0.2 \times B) + (0.4 \times C)$



MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

200

200

CASE STUDY 8

CAPITAL GAINS AND DUTY

Sec II : Computation of real value of company in accordance with rule 5(6) and (7) of the Capital Gains Rules, 1993:		
a	Total Net Asset Value of the company:	€300,000
b	Real Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5 of the Capital Gains Rules, 1993:	
Company	Income Tax no.	Real Value
Blue Limited	993058295	€489,120
		€489,120
Deduct book value of shares held in the company (as stated in the financial statements)		(€120,000)
c	Total real value of immovable property as stated in the Architect's Valuation (as per Part 6)	€1,520,000
	less Total book value of immovable property	(€750,000)
Adjustment to the value of immovable property:		€770,000
d	Value of goodwill: (as calculated in Sec IV below)	€58,800
e	Deduct the book value of shares referred to in rule 5(6)(d) of the Capital Gains Rules, 1993:	NIL
f	Add Liabilities in excess of the value of all assets as determined in accordance with article 42(2)(c) of the Act:	€50,000
g	Total Adjusted real value of the Company	€1,547,920

www.cft.gov.mt

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

201

201

CASE STUDY 8

CAPITAL GAINS AND DUTY

Sec III : Real value of shares transferred:					
a	Adjusted real value of the company (Sec IIg)	€1,547,920			
b	Percentage of real value as represented by shares transferred (higher of C/A, D/B in Sec I)	20%			
c	Real value of shares transferred (a X b)	€309,584			
d	Amount or value of the consideration for the shares transferred	€240,000			
e	Amount chargeable to duty (higher of c and d)	€309,584			
f	Rate of duty (€ 5 or € 2 for every one hundred euro or part thereof)	€5			
g	Amount of duty due (e X f)	€15,480			
Sec IV : Calculation of the Amount Representing the Value of Goodwill:					
a Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:					
Year ended		31 December			
Profit before tax					
Year 1	Year 2	Year 3	Year 4	Year 5	Total
€20,000	€25,000	€26,000	€36,000	€40,000	€147,000
Value of goodwill:					€58,800

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.

Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.

Page 03

MALTA
INSTITUTE
OF TAXATION

© Malta Institute of Taxation 2023

202

202

