



MALTA
INSTITUTE
OF TAXATION

MIT COURSE ON TAXATION

2023-2024 MODULE B EXAMINATION PAPER

DATE: MONDAY 8th JANUARY 2024

TIME: 17:00 - 19:15HRS (including 15 minutes reading time)

PREMISES: ST ALOYSIUS SECONDARY SCHOOL, B'KARA

INSTRUCTIONS:

1. The examination is held in accordance with the Course Regulation. No materials or reference books are to be brought into the examination hall save as allowed by the Regulations.
 2. Blue or black ball-point pens should be used.
 3. Use only one side of the writing paper provided. Insert your Index number, the Question number and the Page number on each page. Jottings and drafts are to be clearly cancelled. Please do not write underneath the last line on the writing paper.
 4. Candidates are to answer ANY TWO QUESTIONS.
 5. Each question carries 50 marks.
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QUESTION 1

Kindly note that this Question consists of three parts, and you are required to answer all of the questions included in each of the three parts.

A [Part 1]:

John is a 40% shareholder in ABC Company Limited ('ABC'), a Malta registered company that was incorporated by his mother, Margaret in 2002 as sole shareholder. In 2015, Margaret had donated all her shares in ABC to her children. The value of the 40% shareholding declared by John upon the donation for the purposes of the Duty on Documents and Transfers Act ('DDTA')¹ was €285,000 (which was also equivalent to their fair market value at the time).

ABC is the main asset of the family, holding both the family business as well as capital assets such as listed and unlisted shares, and recently has also acquired certain investment property.

Over time the family divested of its shareholding in ABC which is currently owned as to 40% by John, 20% by his sister Lisa, and the remaining 40% held by a third party, Michelle, who had acquired her shareholding in ABC from Daniel (John and Lisa's brother) in 2017. All shares rank *pari passu* in all respects.

John has now received an offer from Michelle for his 40% shareholding in ABC, for a consideration of €400,000.

John has approached you for tax advice in relation to the transfer of his 40% shareholding in ABC, and has specifically requested you to:

- i. Indicate whether the share transfer would, for the purposes of the Capital Gains Rules ('CGR')², constitute a transfer of a controlling interest or not, stating the reasons why
(3 marks)
- ii. Establish the deemed selling price on the basis of the methodology prescribed by the CGR
(15 marks)
- iii. Compute the chargeable capital gain
(6 marks)
- iv. Compute the Malta income tax liability for John and his spouse for year of assessment 2024 by applying the most favourable individual tax rates. In this regard it is noted that (i) John is married with two young children; (ii) John earns a gross salary of €30,000 from his full-time employment; (iii) John's spouse earns an annual gross salary of €20,000 from full-time employment; and (iv) the only other income derived during the year is the capital gain derived from the transfer of the 40% shareholding in ABC. The individual tax rates are included in the annex
(6 marks)

Assume that the share transfer was effected on 31 December 2023.

¹ Chapter 364 of the laws of Malta

² Subsidiary Legislation 123.27 of the laws of Malta

ABC Company Limited**Statement of financial position as at 31st December 2022**

Assets	€
Investment property (at cost)	850,000
20% shareholding in XYZ Limited (unlisted)	5,000
15% shareholding in PO plc	135,000
Other assets	350,000
Liabilities	
Bank Loans and overdraft	250,000
Other liabilities	200,000
Net Asset Value	890,000
Equity	
Issued Share Capital	10,000
Retained Earnings	880,000
Total Equity	890,000

Additional notes

1. The Investment Property, acquired in 2020, has been revalued by an architect at €925,000;
2. ABC owns 20% shareholding in XYZ Limited ('XYZ') a Malta registered company incorporated in January 2020. In both FY2021 and FY2022 ABC received a gross dividend of €5,000 (i.e. €10,000 over the two year period) from XYZ, which amounts are included in ABC's profit before tax figures indicated in note 5 below;
3. ABC owns 15,000 shares (representing 15% shareholding) in PO plc, a company listed on the Malta Stock Exchange ('MSE'). The last quoted price of the PO plc shares on the MSE as at the date of the share transfer was €8 per share;
4. Both ABC and XYZ have a 31st December financial year-end;
5. The profit before tax figures for ABC for FY2018 – FY2022 are as follows:

ABC

FY18	FY19	FY20	FY21	FY22
€	€	€	€	€
23,000	-3,000	28,000	42,000	45,000

6. XYZ - The net asset value of XYZ on the basis of its Statement of Financial Position as at 31 December 2022 was €50,000; and the amount of Goodwill established on the basis of the goodwill methodology prescribed by the CGR was €60,000; XYZ does not own any immovable property or any shareholding in any other company.
7. ABC and XYZ did not acquire and/or dispose of any immovable property and / or any shares in other companies during 2023.
8. The inflation rates established in terms of article 13 of the Housing (Decontrol) Ordinance are included in the Annex.

B [Part 2]:

Michelle has also approached Lisa, John's sister, to acquire her 20% minority shareholding in ABC for a consideration of €150,000, on condition that the transfer is effected by not later than June 2024.

In this regard you are required to comment on the salient Malta tax considerations that may be relevant to Lisa, *inter alia* highlighting the criteria that render a transfer of shares to qualify as a 'transfer of a controlling interest' in terms of the CGR

(8 marks) *

**The question does not necessitate the inclusion of additional computations or numerical data.*

C [Part 3]:

The taxation on capital gains is regulated by the provisions of article 5 the Income Tax Act ('ITA')³ and the CGR. You are required to provide **brief** comments on the salient Malta income tax considerations in respect of the following transfers:

- i. The transfer of ordinary shares by Mr. Button in Holdco Limited, a Malta registered company ('Holdco'). Mr. Button is neither resident nor domiciled in Malta. The assets of Holdco are (i) immovable property situated outside Malta, and (ii) interest-bearing loans granted by Holdco to related companies.
(4 marks)
- ii. The transfer of ordinary shares in Propco Limited ('Propco') by Sellerco Limited ('Sellerco') to Purchaseco Limited ('Purchaseco') - three Malta registered companies. The assets of Propco solely consist of immovable property situated in Malta. Michael is the sole shareholder in Sellerco and also owns 60% ordinary

³ Chapter 123 of the laws of Malta

shareholding in Purchaseco. The remaining 40% of the shares in Purchaseco are owned by another individual who is resident and domiciled outside Malta.

(4 marks)

- iii. The transfer of 5% cumulative preference shares in Investco Limited ('Investco') by Robert to Andrew, both ordinarily resident and domiciled in Malta. The sole asset of Investco is a registered trademark.

(4 marks)

[TOTAL: 50 marks]

QUESTION 2

Kindly note that this Question consists of four parts, and you are required to answer all of the questions included in each of the four parts.

A [Part 1]:

Martin, a Malta resident individual, is undertaking a material investment in CIS-SICAV plc ('CIS-SICAV'), a Collective Investment Scheme licensed under the Investment Services Act⁴, and would like to understand the overall Malta income tax profile relevant to this investment.

CIS-SICAV is listed on the Malta Stock Exchange, and only invests in Malta based assets, mainly local real estate, and publicly listed bonds.

In this regard, Martin has approached you for tax advice in relation to his investment, and has specifically requested you to provide brief comments on the Malta income tax considerations in relation to the following:

- i. The classification of CIS-SICAV (prescribed vs non-prescribed);
- ii. The income derived by CIS-SICAV from the Malta real estate and publicly listed bonds; and
- iii. Any capital gain that may be derived by Martin upon the eventual disposal of his units in CIS-SICAV

(12 marks)

B [Part 2]:

The taxation of capital gains derived upon the transfer of a business is regulated by article 5 of the ITA. Such transfers may result in a liability to Malta income tax, unless covered by specific exemptions / relief provisions, such as article 5(9) and article 5(15) of the ITA. In this regard elaborate on the potential application of these two provisions with specific reference to

- i. statutory requirements for these provisions to apply, and
- ii. the relevant Malta income tax considerations upon a future/subsequent transfer of the same business to an unrelated party.

(12 marks)

C [Part 3]:

The taxation of transfers of immovable property situated in Malta is regulated by the provisions of Article 5A of the ITA. You are required to provide brief comments (with calculations where applicable) on the salient Malta tax considerations in respect of the following transfers of immovable property situated in Malta, all of which took place in 2023:

- i. Luke transferred a residential property that has been used as his main residence since he acquired it back in 2000 up until 2020. The property was sold for €500,000;

⁴ Chapter 370 of the laws of Malta

- ii. Simon does not have any descendants and decided to donate an apartment to his nephew. Simon had purchased the apartment in 2015 for €350,000 and its market value has increased to €600,000 in 2023;
- iii. A transfer of an apartment by HIJ Limited ('HIJ') to a young couple for €800,000. HIJ had acquired a plot of land in 2019 and constructed thereon 8 apartments and 1 penthouse;
- iv. Martina sold a villa for €1,200,000 to an unrelated individual. Martina had inherited the villa from her late grandfather in 1990, and the property acquisition value declared in the *causa mortis* transmission was €100,000.

In all instances, the consideration for the property transfer (where applicable) is equivalent to the property market value.

(14 marks)

D [Part 4]:

Gerald generates rental income from 3 commercial properties in Malta which he currently owns and rents to a number of different lessees. In 2023 he derived the following rental income:

- Commercial Property 1, which he rents to Opco Limited ('Opco') for €20,000 per annum. Gerald and his brother each own 50% ordinary shareholding in Opco. Gerald had originally financed the acquisition of this property by a bank loan, which was however settled in full in 2022;
- Commercial Property 2, rented to a Maltese sole trader for €1,000 per month. Gerald had taken a private loan from his parents to buy this property on which he incurs €9,000 annual interest; and
- Commercial Property 3, rented to a company registered in Malta, for €15,000 per annum. The acquisition of this property was financed by a bank loan, on which Gerald incurred €2,000 interest cost in 2023.

Rental income earned by an individual taxpayer may be taxed either at the respective marginal tax rates, or at the final tax rate in terms of article 31D of the ITA. You are requested to compute the options available to Gerald and highlight the most favourable Malta income tax outcome for Gerald with respect to the rental income. Elaborate on specific definitions which may be relevant.

Assume that

- i. Gerald is a single individual earning income from his full-time employment in excess of €60,000; and
- ii. the above detailed rental income is considered to be 'passive income'

(12 marks)

[TOTAL: 50 marks]

QUESTION 3

Kindly note that this Question consists of four parts, and you are required to answer all of the questions included in each of the four parts.

A [Part 1]:

Joseph, a 78-year-old Malta resident individual, is the sole shareholder of Joe Realty Limited ('JRL'), a company incorporated under the laws of Malta in the late 1960s. JRL principally owns immovable property situated in Malta held for rental income and capital accretion.

In December 2023, Joseph, has completed the process of donating the bare ownership of his ordinary shares in JRL to his children (descendants in the direct line), whilst retaining the usufruct on such ordinary shares. The donation of shares was effected by public deed.

JRL did not acquire and/or dispose of any immovable property and / or any shares in other companies during 2023.

Joseph approached you to:

- i. Briefly comment on the salient Malta income tax and duty considerations relevant to the donation of bare ownership of the ordinary shares and compute the tax and real market value applicable to the share donation. (14 marks)
- ii. The applicable statutory rate for the purposes of the DDTA may be at the standard €2 for every €100 or part thereof, €5 for every €100 or part thereof or the temporarily reduced €1.5 for every €100 part thereof.

Briefly comment on the relevant criteria for the different rates, including the relevant conditions for the donation to be subject to the reduced duty rates, including any potential holding requirements.

(6 marks)

Assume that the share donation was effected on 31 December 2023 through a public deed.

Refer to the Annex for the relevant usufruct rates

Joe Realty Limited**Statement of financial position as at 31st December 2022.**

Assets	€
Investment property	3,800,000
Other assets	85,000
Liabilities	
Bank loans	750,000
Shareholder Loan	185,000
Other liabilities	10,000
Net Asset Value	2,940,000
Equity	
Issued Share Capital - Ordinary Shares	10,000
Retained Earnings	2,930,000
Total Equity	2,940,000

Additional notes

1. The properties owned by the company have been recently revalued by an architect and are equivalent to the values included in the company's books as at 31st December 2022;
2. JRL has a 31st December financial year-end;
3. The bank loans of €750,000 (made up of two distinct loans) and the €185,000 Shareholder loan, are as follows:
 - a. Bank Loan A, having a balance as at 31st December 2022 of €700,000, financed the acquisition of an investment property currently owned by JRL;
 - b. Bank Loan B, having a balance as at 31st December 2022 of €50,000, financed the granting of a loan granted to a related party entity (part of 'Other assets');
 - c. The Shareholder loan was extended by Joseph to JRL to finance the acquisition of a property. This loan was never registered with the Public Registry.

4. JRL's profit before tax figures are as follows:

FY18	FY19	FY20	FY21	FY22
€	€	€	€	€
50,000	55,000	60,000	60,000	65,000

B [Part 2]:

In 2015 Kevin acquired 20% shareholding in a Malta real estate company MRE Limited ('MRE') at a cost of €200,000. MRE's only assets consist of immovable property situated in Malta. Kevin's shareholding does not constitute a controlling interest for the purposes of the CGR.

In December 2019 Kevin settled his entire 20% shareholding in MRE on trust for the sole and exclusive benefit of his only son Ian. The value of the shares at the time of settlement was €500,000 and the trust deed specifically provided that Ian (as the sole beneficiary) has an irrevocable vested right to receive the 20% shareholding in MRE settled in trust by his father.

In 2021 the Trustee distributed the 20% shareholding in MRE to Ian, at which time the value was €600,000.

Ian is interested in investing in a technology start-up and in order to raise the necessary liquidity, is considering divesting of his 20% shareholding in MRE. Ian is confident that he can secure a deal (for the sale of his MRE shares) for €750,000.

Ian has requested you to provide a brief overview of the key Malta income tax considerations in terms of the ITA (supported by calculations where necessary) in relation to the proposed transfer of his 20% shareholding in MRE, which is likely to be effected by end of January 2024. In addition, Ian would also like to understand the key Malta income tax considerations in terms of the ITA applicable to the prior MRE share transactions involving the trust, namely (i) the settlement on trust by his father in 2019; and (ii) the distribution of the shares by the Trustee in 2021.

(10 marks)

C [Part 3]:

PropertyCo Limited ('PropertyCo') and ContractorCo Limited ('ContractorCo'), are two companies registered in Malta, and are contemplating entering into a joint venture arrangement, wherein each shall contribute assets to JointVentureCo Limited ('JVCo'), a company that would eventually be owned equally by PropertyCo and ContractorCo.

PropertyCo is the current owner of a plot of land previously acquired in 2001 (the 'Property') and due to be developed. PropertyCo intends to transfer the Property to JVCo (which at the time would be fully owned by PropertyCo) at its market value of €5,000,000, in exchange for additional shares in JVCo Limited (5,000,000 shares of €1 each).

Immediately thereafter, ContractorCo shall inject €5,000,000 funds in JVCo (equivalent to the value of the Property) to finance the acquisition of the required materials and machinery. In exchange, ContractorCo shall be allotted 5,000,000 shares of €1 in JVCo to become 50% shareholder in JVCo.

JVCo shall be a newly registered company in Malta with no prior activity, and the expected statement of financial position as at the key transaction steps shall be as follows:

JVCo

Statement of financial position as at relevant dates (*cash and share capital on incorporation have been disregarded*)

	1. Property Contribution	2. Funds Contribution
Assets	€	€
Property (at Fair Market Value)	5,000,000	5,000,000
Cash and cash equivalents	0	5,000,000
Net Asset Value	5,000,000	10,000,000
Equity		
Issued Share Capital - PropertyCo	5,000,000	5,000,000
Issued Share Capital - ContractorCo	0	5,000,000
Retained Earnings	0	0
Total Equity	5,000,000	10,000,000

The directors of PropertyCo have been advised that the initial transfer of the Property by PropertyCo to its fully owned subsidiary company JVCo should be subject to intra-group tax relief provisions under article 5A(4)(f) of the ITA, and that the consequent €5,000,000 increase in share capital of JVCo in favour of its sole shareholder PropertyCo should likewise not give rise to any Malta income tax liability.

However, they would like to understand the Malta income tax considerations in terms of the ITA on the second step, being the introduction of ContractorCo as a 50% shareholder in JVCo.

In this regard you are requested to briefly comment on the Malta income tax considerations in terms of the ITA (with computations where applicable) relevant to PropertyCo, ContractorCo and JVCo upon the allotment of 5,000,000 shares by JVCo to ContractorCo (whereby the latter would become 50% shareholder in JVCo).

(10 marks)

D [Part 4]:

The Malta Financial Intelligence Analysis Unit (FIAU) has published a factsheet on red flags and high-risk indicators of tax-related money laundering, which refers to the following, among others, as potential red flags:

- a. the use of shareholders' loans to finance corporate activities;
- b. the establishment of a company in a jurisdiction where the client does not actually have any presence or conduct any activities;
- c. the use of inexplicably intricate structures;
- d. the administrative body of an entity, such as a company's board of directors, manifestly lacks the skill or time to properly undertake its function;
- e. sales and purchases not backed by invoices or proper documentation, or doubts about the legitimacy of such documentation.

You are required to briefly contextualise and comment upon any two of the above, by explaining in what circumstances the potential red flag is likely to be indicative of money laundering and/or terrorist financing and/or tax evasion, and whether there may be any justifying and/or mitigating factors to consider. Refer to practical (hypothetical) examples where possible.

(10 marks)

[TOTAL: 50 marks]

<i>HOUSING (DECONTROL)</i>		
2001	624.85	<i>(L.N. 46 of 2002)</i>
2002	638.54	<i>(L.N. 73 of 2003)</i>
2003	646.84	<i>(L.N. 90 of 2004)</i>
2004	664.88	<i>(L.N. 32 of 2005)</i>
2005	684.88	<i>(L.N. 30 of 2006)</i>
2006	703.88	<i>(L.N. 36 of 2007)</i>
2007	712.68	<i>(L.N. 83 of 2008)</i>
2008	743.05	<i>(L.N. 50 of 2009)</i>
2009	758.58	<i>(L.N. 184 of 2010)</i>
2010	770.07	<i>(L.N. 188 of 2011)</i>
2011	791.02	<i>(L.N. 70 of 2012)</i>
2012	810.16	<i>(L.N. 55 of 2013)</i>
2013	821.34	<i>(L.N. 88 of 2014)</i>
2014	823.89	<i>(L.N. 76 of 2015)</i>
2015	832.95	<i>(L.N. 129 of 2016)</i>
2016	838.29	<i>(L.N. 79 of 2017)</i>
2017	849.77	<i>(L.N. 54 of 2018)</i>
2018	859.63	<i>(L.N. 29 of 2019)</i>
2019	873.73	<i>(L.N. 30 of 2020)</i>
2020	879.32	<i>(L.N. 67 of 2021)</i>
2021	892.51	<i>(L.N. 63 of 2022)</i>
2022	947.40	<i>(L.N. 38 of 2023)</i>

TAX RATES			
Chargeable Income (€)			
From	To	Rate	Subtract
Single Rates			
0	9,100	0%	0
9,101	14,500	15%	1,365
14,501	19,500	25%	2,815
19,501	60,000	25%	2,725
60,001	and over	35%	8,725
Married Rates			
0	12,700	0%	0
12,701	21,200	15%	1,905
21,201	28,700	25%	4,025
28,701	60,000	25%	3,905
60,001	and over	35%	9,905
Parent Rates			
0	10,500	0%	0
10,501	15,800	15%	1,575
15,801	21,200	25%	3,155
21,201	60,000	25%	3,050
60,001	and over	35%	9,050

Age of the usufructuary	Percentage of the value of full ownership
where the usufructuary has not completed twenty years of age:	seventy per cent
where the usufructuary has completed twenty years of age but not thirty years:	sixty per cent
where the usufructuary has completed thirty years of age but not forty years:	fifty per cent
where the usufructuary has completed forty years of age but not fifty years:	forty per cent
where the usufructuary has completed fifty years of age but not sixty years:	thirty per cent
where the usufructuary has completed sixty years of age but not seventy years:	twenty per cent
where the usufructuary has completed seventy years of age:	ten per cent.

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