

Examiner's Feedback Report

Module C 2023-2024

General Comments

The assignment question required candidates to consider the tax treaty implications of a distribution of dividends from Eva Sub Ltd, a company incorporated in Country C, to Eva Ltd a company incorporated in Country A, but having its management and control in Malta. The question required candidates to consider the application of any anti-avoidance provisions which may be found in the treaty Malta has with Country C and the application of the principal purpose test.

The overall performance of candidates in this assignment was just satisfactory. An assignment requires candidates to carry out their own in-depth research into the subject, and not just rely on information provided in the lectures. It appears that in most cases, this in-depth research was not performed.

The question required candidates to consider the beneficial ownership test present in Malta's treaties, the potential application of the anti-remittance clause found in most Malta's treaties and the application of the principal purpose test.

Most candidates correctly referred to the OECD Commentaries with respect to the application of the beneficial ownership test, even referring to some of the case law on beneficial ownership. However, the application of the anti-remittance clause was for the most part completely ignored – notwithstanding that it is present in more than 50% of Malta's treaties. This provision provides that where a company resident in Malta is taxed on a remittance basis, the treaty will only restrict the source State (Country C) from taxing if the relevant income is actually received or remitted to Malta. In the case at hand, given that the Eva Sub Ltd is taxable on a remittance basis, and does not have bank accounts in Malta, if the treaty included the anti-remittance clause the treaty between Malta and Country C would not have applied.

With respect to the application of the principal purpose test, the fact pattern of the assignment question is very similar to our of the examples in the principal purpose test commentary, in fact paragraph 177 of the Commentary to Article 29 of the OECD Model refers to cases where the meetings of the board of directors of a company are held in a different country so that the company has changed its residence. Unfortunately, the majority of candidates simply referred to the general rules relating to the principal purpose test, highlighting that there could be a risk that the treaty is not applied, without specifically mentioning the relevant paragraph.