

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2026

MODULE 1 – PRINCIPLES OF INTERNATIONAL TAXATION

SUGGESTED SOLUTIONS

PART A

Question 1

OECD MTC

There are a number of ways to answer this question and the below provides one possible schematic.

It is anticipated that candidates will address the following:

- the meaning of "falls within the scope" of a double tax agreement ("DTA") between two Contracting States ("CS");
- how Article 25 OECD MTC 2017 deals with disputes about that question, and how the position has been developed by the 2025 Update;
- the relationship between DTA Article 24 non-discrimination and GATS Article XVII; and
- whether the same approach should extend to other trade or investment agreements (IA).

The 2017 Position

The pre-2025 version of OECD MTC 2017 did not contain a specific GATS rule defining when a measure "*falls within the scope*" of a DTA in Article 25. While Article 2 identifies the taxes generally covered by the DTA, it did not settle the specific GATS/DTA issue. Article 25 was relevant because Article 25(3) allowed the competent authorities (CA) to resolve difficulties or doubts about the interpretation or application of the DTA (Commentary on Article 25 OECD MTC 2017, [6.1]). However, the specific GATS issue was dealt with in Commentary on Article 25 OECD MTC 2017, [88] to [94]: if the CSs disagreed about whether a measure fell within the scope of a DTA, the issue could be brought before the Council for Trade in Services for binding arbitration. There was, however, an exception where the relevant DTA existed at the time of the entry into force of GATS / the WTO Agreement: in that case, both CSs had to agree before the matter could be brought to the Council.

The Commentary identified two issues: (i) GATS treated pre 1 January 1996 and post 1 January 1995 DTAs differently, including uncertainty for pre-1995 DTAs later amended or renegotiated: Commentary on Article 25 OECD MTC 2017, [91] and (ii) "*falls within the scope*" was ambiguous: it was unclear whether this covered all measures relating to taxes dealt with by the DTA or only measures relating to particular DTA provisions: [92]. The Commentary on Article 25 OECD MTC 2017, [93] was an alternative provision that CSs could include in their DTAs, which provided that the matter could go to the Council for Trade in Services only "*with the consent of both Contracting States*". This prevented unilateral GATS referral but it did not provide a test for when a measure falls within the DTA.

New Article 25(6) OECD MTC

The 2025 Update adds new Article 25(6), which provides that, for GATS Article XXII(3), a measure "*falls within the scope of this Convention*" only if it is a measure "to which the provisions of Article 24 apply". Article 25(6)(b) then provides that disputes about whether a measure falls within the scope of the DTA are resolved under Article 25(3) or ailing agreement under that procedure, by "any other procedure agreed to by both Contracting States". Commentary on Article 25(6) OECD MTC 2025, [92.1] explains that: "*where the non-discrimination discipline provided by Article 24 applies to a 'measure', that discipline should not be displaced by the non-discrimination obligations provided under Article XVII of the GATS.*" Commentary on Article 25(6) OECD MTC 2025, [91] also confirms that Article 25(6) removes the pre-/post-1995 distinction for relevant DTAs and the role of the taxation authorities in determining whether a measure falls within the scope of the DTA. The 2025 Update therefore develops the 2017 Commentary wording. The 2017 wording prevented unilateral referral to the Council for Trade in Services but it did not define when a measure fell within the DTA. Article 25(6) now adds that test: ask whether Article 24 applies.

The following considers the procedural choice to give the scope dispute to the CAs under Article 25(3) and the substantive choice to use Article 24 as the test for whether the measure falls within the DTA.

Reasons for giving the issue to the CA may include:

For: DTA interpretation. The question is whether the measure falls within the DTA. Under the 2025 wording this means asking whether Article 24 applies, which requires interpretation of DTA concepts such as PE non-discrimination, deductibility of cross-border payments and discrimination against enterprises owned or controlled by residents of the other CS; *Coherence*. Using Article 25(3) keeps the question within the DTA process, which may produce a more consistent bilateral interpretation than allowing the same DTA scope issue to be decided by a WTO or investment tribunal applying another agreement; *Respect for the agreed DTA framework*. If Article 24 applies, the OECD's view is that the DTA non-discrimination rule should not be displaced by GATS Article XVII, which then protects the non-discrimination framework that the CSs agreed in the DTA.

Against: *Taxpayer access*. Article 25(6) is a CS-to-CS mechanism (a “sovereign to sovereign allocation of forums” DLA Piper 2025) as the affected taxpayer or service supplier does not control whether the CAs agree (see also **This** is consistent with the OECD Manual on Effective Mutual Agreement Procedures (2026 Edition), which describes MAP as a government-to-government process involving CAs and notes that they generally have specialised knowledge of DTAs and transfer pricing; No *guaranteed outcome*. Article 25(3) requires the CAs to endeavour to resolve the issue but does not require them to agree. Commentary on Article 25(6) OECD MTC 2025, [93] confirms that Article 25(5) arbitration does not apply to an Article 25(3) MAP case such that the question may remain unresolved unless the DTA contains a fallback procedure; *Delay*. MAP can take time. OECD 2024 MAP statistics show average resolution times of 27.4 months across all cases and 30.9 months for transfer pricing cases (this is only a general point rather than specific to Article 25(6) disputes).

On balance, candidates may conclude that CAs are an appropriate body to decide the issue because the question is framed as a DTA interpretation issue. In the 2025 Update, the question is whether Article 24 applies, which is a tax treaty question and fits naturally within Article 25(3) – this is consistent with the OECD Manual on Effective Mutual Agreement Procedures (2026 Edition), which describes MAP as a government to government process involving CAs and notes that CAs generally have specialised knowledge of DTAs and transfer pricing. However, the design may be described as incomplete because Article 25(3) requires the CAs to try to agree rather than to agree. The Commentary also confirms that Article 25(5) arbitration does not apply to an Article 25(3) MAP case. A DTA may therefore need a fallback procedure if the CAs cannot resolve the scope issue: Commentary on Article 25(6) OECD MTC 2025, [92.6] and [93].

Article 24 Test

Article 25(6)(a) (2025 update) makes Article 24 the test for whether a measure “*falls within the scope*” of the DTA for GATS purposes. Article 24(6) extends the Article 24 non-discrimination rules to “taxes of every kind and description”. Accordingly, Article 25(6) is not limited to Article 2 covered taxes. A measure involving an indirect tax, such as VAT or GST, may fall within the DTA for this limited Article 25(6) purpose where one of the relevant Article 24 non-discrimination rules is engaged (Commentary on Article 25(6) OECD MTC 2025, [92.2]). However, this does not mean that indirect taxes are generally covered by the DTA for all purposes.

While the Article 24 test is clear, it is not all-encompassing. Article 25(6) gives priority to the DTA non-discrimination framework only where Article 24 applies. Where Article 24 does not apply or if the DTA narrows Article 24 to Article 2 covered taxes, GATS Article XVII may still be relevant.

- Article 24 and GATS Article XVII may apply different tests. Article 24 generally contains specific DTA non-discrimination rules, including nationality discrimination, PE non-discrimination, deductibility of certain payments, and discrimination against enterprises owned or controlled by residents of the other CS. By contrast, GATS Article XVII is a national treatment rule for services and service suppliers. Article 25(6) matters because, where Article 24 applies, the measure is dealt with under the DTA non-discrimination framework unless both CS agree to use the GATS route. The practical consequence is that a CS cannot simply bypass Article 24 by recasting the issue as a GATS national treatment dispute. This may then reduce the scope for relying on GATS national treatment in tax cases as Article 24 is more specific than a general national treatment standard; and
- The reach of Article 24 varies bilaterally. Some CSs reserve the right to restrict Article 24 to taxes covered by the DTA (eg Chile, Colombia, Greece, Israel and the United Kingdom reserve the right to restrict Article 24 to taxes covered by the DTA. Where Article 24 is so restricted, non-Article 2 taxes are not subject to Article 24 and may remain subject to GATS Article XVII: Commentary on Article 25(6) (2025 update), [92.3]. Where Article 24 is omitted altogether, the Commentary ([92.4]) provides that Article 25(6) is not necessary and so can be omitted.

The Article 24 test is simple but limited: Article 25(6) gives priority to the DTA non-discrimination framework where Article 24 applies. Where Article 24 applies, the measure is treated as falling within the DTA for GATS purposes and the issue is dealt with under Article 25(3), unless both CSs agree otherwise. However, where Article 24 does not apply, or if Article 24 is restricted to Article 2 covered taxes, Article 25(6) does not prevent GATS Article XVII from remaining relevant. The rule therefore can be described as protecting Article 24 from being bypassed but does not cover every tax measure that may affect foreign service suppliers.

Other Trade or Investment Agreements

Article 25(6) OECD MTC 2025 is GATS-specific; it does not automatically deal with other trade or investment agreements. Commentary on Article 25(6) OECD MTC 2025, [94] recognises that similar overlap may arise outside GATS and says CSs may amend Article 25(6) “in the course of their bilateral negotiations” so that issues relating to taxes covered by the DTA are dealt with through MAP rather than through the dispute mechanism in the other agreement and that CSs should consider the tax provisions, non-discrimination obligations and coordination rules

already included in that other agreement. This is because investment agreements may raise different issues from GATS: while a GATS dispute is focused on national treatment for services and service suppliers, an investment agreement may instead involve standards such as fair and equitable treatment or expropriation. Those standards do not match Article 24 DTA non-discrimination such that it may be understandable that there is no automatic extension of Article 25(6) to all investment agreements.

However, the same basic forum problem can still arise: a tax measure may be relevant to a DTA but may also be challenged under an investment agreement. This may create a risk that the same tax dispute is dealt with both through MAP and through a non-tax dispute mechanism. This point was recognised before the 2025 Update: dispute mechanisms under GATS and investment treaties may operate in parallel with MAP creating a need to clarify whether tax treaty questions should be dealt with through the DTA process rather than non-tax dispute mechanisms (Ismer and Piotrowski, 2022). The OECD position can therefore be described as limited as while it provides a specific rule for the GATS overlap, it leaves investment agreement overlap to bilateral drafting. Candidates may therefore conclude that Article 25(6) deals with the GATS problem but that it only partly addresses the broader problem of tax measures being challenged under non-tax agreements.

UN MDTC

There is no one way to answer the question and the following provides one possible schematic.

It is anticipated that candidates will address matter such as: what it means for a tax measure to “fall within the scope” of a DTA; how Article 25 UNMTC 2021 deals with that issue through MAP; why Article 24 UNMTC is relevant; the relationship between Article 24 and GATS Article XVII; and whether the same approach should extend to other trade or investment agreements. There is no requirement to address the 2025 changes but it is open to candidates to briefly mention these also.

Article 25 UNMTC 2021 and disputes about whether a tax measure falls within a DTA

Article 25 UNMTC 2021 is the MAP provision and while it does not itself decide whether a tax measure is valid, discriminatory or within the relevant DTA, it provides the procedure through which a taxpayer may complain of taxation not in accordance with the DTA and through which the CAs may resolve questions of interpretation and application. (MAP is designed to settle questions about interpretation and application, to provide a forum for redress and to eliminate double taxation in cases not otherwise provided for (Commentary on Article 25, [2])). For a dispute about whether a tax measure falls within a relevant DTA, Article 25(3) is central as it allows the CAs of the CSs to resolve by mutual agreement any “difficulties or doubts” arising as to the interpretation or application of the DTA. A dispute about whether a tax measure is within the DTA is therefore treated as a DTA interpretation issue for the CAs (Article 25(3)).

Article 24 is relevant because it may supply the substantive DTA rule being invoked; if the relevant taxpayer claims that a tax measure is discriminatory, Article 24 may be the provision that brings the measure within the DTA. Article 24(6) is important because where Article 24 applies, notwithstanding Article 2, to “taxes of every kind and description”. (Commentary on Article 24, [8]). Article 25(1) states that where a taxpayer’s case comes under Article 24(1), the case may be presented to the CA of the CS of nationality. The Commentary explains this as an exception to the ordinary residence CS route for MAP claims (Commentary on Article 25, [16] to [18]). The link between Articles 24 and 25 is therefore express.

The GATS issue arises because GATS Article XVII is also a national treatment rule. A tax measure may therefore be framed both as an Article 24 non-discrimination issue under the DTA and as a GATS national treatment issue. The Commentary recognises that, in rare cases, a dispute concerning GATS Article XVII and taxes covered by a DTA could make both MAP and the GATS dispute mechanism appear applicable (Commentary on Article 25, [53]). The main uncertainty is the phrase “falls within the scope” of a DTA, which is inherently ambiguous because it is unclear whether it covers all measures relating to taxes covered by the DTA or only measures relating to particular DTA provisions (Commentary on Article 25, [92]). This uncertainty has been recognised in the GATS literature, where the DTA carve out is treated as difficult to apply because of ambiguous wording and limited guidance (Beyer, 2018). The UNMTC 2021 includes an optional coordination clause in its Commentary on Article 25. This suggests that CS may include a clause under which a dispute about whether a measure falls within the DTA may be brought before the Council for Trade in Services only with the consent of both CSs. Any doubt about that clause is to be resolved under Article 25(3) or, failing agreement, another procedure agreed by both CSs (Commentary on Article 25, [93]). The clause may prevent unilateral GATS referral if it is adopted but it does not provide a clear test for when a measure falls within the DTA. While Article 24 is a possible substantive reason why the measure is within the DTA; it is not stated to be the test. The Commentary also recognises that similar problems may arise under other trade or investment agreements and states that CSs may adapt the suggested clause so that issues relating to taxes covered by the DTA are dealt with through MAP rather than through the dispute mechanisms of those other agreements (Commentary on Article 25, [94]).

Using Article 25 may make sense because the issue is whether the DTA applies and then where Article 24 is engaged, the CAs must interpret DTA concepts such as nationality, residence, PE comparability, deductibility of payments and discrimination against enterprises owned or controlled by residents of the other CS. Those questions fit naturally within Article 25(3). However, the UNMTC 2021 position is limited as the GATS clause is only suggested in the Commentary. Unless the CS include it in the actual DTA, Article 25 does not itself stop a GATS forum from becoming involved. This matters because the UNMTC is only a model; its provisions are not binding unless adopted in a bilateral DTA (Introduction, [13]).

There is also a MAP limitation: in the absence of Alternative B arbitration, Article 25(2) imposes a duty to negotiate but not to reach agreement (Commentary on Article 25, [37]). From a developing country perspective, this limitation is relevant as the UNMTC generally gives more weight to source country taxing rights, which it identifies as significant for developing countries (Introduction, [3]) and many developing countries have no or little experience with the practical application of MAP (Commentary on Article 25, [3]). The wider concern is that DTAs do not fully manage the fiscal consequences of trade and investment agreements and overlapping regimes can create uncertainty, gaps and forum shopping risks (Rolland, 2020). The practical problem is also institutional: tax officials may not appreciate the effect of non tax agreements on tax measures and trade and investment negotiators may not appreciate DTA coverage and it may be unclear who decides whether an overlap exists. This may be especially significant because trade and investment agreements may provide mandatory binding arbitration, while most DTAs rely on MAP and mandatory arbitration is rarely part of MAP for developing countries (ATAF/WU, 2022).

Conclusion

Article 25 provides the DTA mechanism for disputes over whether a tax measure falls within a DTA and Article 24 is relevant because it may supply the substantive non discrimination rule that brings the relevant measure within the DTA. The GATS problem arises because the same tax measure may also be framed as a GATS Article XVII national treatment issue. The 2021 position is useful but limited: the Commentary identifies the overlap and suggests a clause requiring both CS to consent before the matter goes to the GATS Council but that clause is not part of Article 25 itself. Effective protection therefore depends on the CS including the clause in their DTA.

2025 changes

While not required, it is open to candidates to briefly refer to the 2025 changes to the UNMTC. In 2025, the UN Committee of Experts finalised its work on Article 25 of the UNMTC concerning the relationship between DTAs and trade/investment agreements. The GATS clause had already been approved for inclusion in Article 25 at the 29th session and at that same session the Committee voted 15–8 to place the broader “extended provision” in Article 25 rather than only in the Commentary. The 30th session in March 2025 then finalised the text of the extended provision and approved the commentary on both the GATS clause and the extended provision (UN Committee of Experts, 2025). The GATS clause is essentially a coordination rule; it elevates into the text of Article 25 a clause that had previously sat in the Commentary as an optional provision, under which, for purposes of GATS Article XXII(3), a dispute between the CSs about whether a measure falls within the scope of the tax convention may be brought before the WTO Council for Trade in Services only with the consent of both CSs. (UN Committee of Experts, 2025)

The extended provision is broader and more controversial as it provides that a tax measure taken by a CS that is in accordance with the DTA is deemed not to breach any other treaty between the CS and that disputes over whether a tax measure is in accordance with, or within the scope of, the DTA must be settled only by reference to the DTA and without recourse to dispute settlement under other treaties. For other tax measure disputes, recourse to investment agreement dispute settlement is restricted unless both CAs agree (UN Committee of Experts, 2025). The decision was contested. Supporters viewed the extended provision as strengthening the role of CAs and keeping tax disputes in tax appropriate fora rather than before investment tribunals; the Commentary also clarifies that settlement by reference to the DTA need not occur through MAP or Article 25 arbitration and may include a domestic court or administrative tribunal applying the DTA. A “medium-sized minority”, however, viewed the provision as an override of investment protections rather than a simple coordination rule, raising concerns about uncertainty, undefined terms, whole of government coherence, indirect amendment of investment agreements through DTAs, and possible effects on investment protection. (UN Committee of Experts, 2025).

Question 2

There are a number of ways to answer this question and the below provides one possible schematic.

Candidates may consider: why cross-border services create difficulty under traditional DTA rules; how the proposed United Nations Framework Convention on International Tax Cooperation (UNFC) frames the issue; why one early protocol concerns cross-border services; how the United Nations Model Tax Convention (UNMTC) is moving towards greater source-state taxation; and whether the proposed protocol (USP) can make that policy direction clear, administrable and capable of relieving double taxation.

Introduction

Article 5(1) OECD MTC 2017 defines a permanent establishment (PE) by reference to a “fixed place of business” through which the enterprise’s business is carried on. Article 7(1) then provides that business profits of an enterprise of one Contracting State (CS) are taxable only in that CS unless the enterprise carries on business in the other CS through a PE there; Article 7 is therefore the residual DTA rule for business profits: absent a PE, business profits are generally taxable only in the residence state, unless a specific allocation article applies, such as Article 8, Articles 10 to 13, or Articles 15 to 21 (Article 7(4), OECD MTC 2017; and Commentary on Article 7, [1] and [74]). The OECD MTC expressly provides that “business” includes professional services and other independent activities (Article 3(1)(h), OECD MTC 2017). The Commentary explains that until an enterprise has a PE in another CS, it should not be regarded as participating sufficiently in that CS’s “economic life” to justify source taxation (Commentary on Article 7, [11]). Traditional DTA rules may therefore provide some degree of certainty but they may be under inclusive where services are supplied remotely into a market without physical presence.

UN Framework Convention

Proposed United Nations Framework Convention on International Tax Cooperation (UNFC) is the institutional setting for the USP. General Assembly Resolution 79/235 establishes a Member State led, intergovernmental committee to draft the UNFC and “two early protocols simultaneously” (GA Resolution 79/235, [3]). The Terms of Reference (TOR) state that the Framework Convention should enhance the “legitimacy, certainty, resilience and fairness” of international tax rules (TOR, [7(c)]) and also require rules that are “as simple and easy to administer as the subject matter allows” and that “ensure certainty for taxpayers and governments” (TOR, [9(g)]–[9(h)]). This means the statement in the question appears to support the UN mandate itself: fairer taxing rights are not enough unless they are translated into certain and administrable rules.

The services protocol

The TOR provide that one early protocol should address income from cross-border services in an increasingly digitalised and globalised economy (TOR [15]). The Workstream II Co-Lead’s Draft Options Paper (WOP) confirms that this is the first early protocol and that the draft text is to be submitted with the Framework Convention and the second early protocol for General Assembly consideration in 2027 (Workstream II Options Paper, [1]). The problem is not simply that some CSs want more source-country taxing rights. WOP records disagreement: many Member States consider current rules inappropriate because services can increasingly be performed remotely through digital technology, while others consider existing rules broadly appropriate for most services (WOP, [3]). The practical difficulty is that CSs use different domestic approaches; some, including many developed countries, tax services mainly by reference to where services are performed; where services are performed remotely, the payer jurisdiction may not tax the income (WOP, [8]). Others, primarily but not only developing countries, impose gross-basis withholding taxes on payments to non-residents for cross-border services, regardless of where the services are performed (WOP, [9]). Traditional DTA rules restrict the second approach because many services are treated as business profits and taxable only in the residence state unless the non-resident has a PE in the source state (WOP, [10] and Article 7(1), OECD MTC 2017).

UN Model Tax Convention (UNMTC)

May also be mentioned briefly because it shows the direction of travel but there is no requirement to refer to the 2025 updates. The UNMTC has gradually changed to allow source states to impose gross-basis taxes on a wide variety of services Article 12B on automated digital services and the 2025 provisions including Article 12AA on services, Article 8 Alternative A on international transport, and Article 12C on insurance (WOP, [13]) - it is open to candidates to refer to these provisions but as stated above there is *no* requirement to do so. Furthermore, the 2025 changes specifically involve an important signalling function by showing that source countries have a valid claim to tax a wider range of services (Michel, 2025 and Ahmed, 2025). The UNMTC influences future DTA negotiations but does not automatically change existing DTAs. Many developing countries have older DTAs limiting gross-basis withholding and that so changes may primarily affect future negotiations (WOP, [14]). Therefore the USP may be more significant if it operates multilaterally, as many developing countries may see it as a way to modify many DTAs through a single instrument, which would require overriding at least Articles 5 and 7 in existing DTAs (WOP, [42]).

What may make the protocol “workable” - (i) a clear nexus rule. There is an acknowledgement that rules limiting source taxation to services physically provided in the relevant state “may not produce appropriate results” and that most Member States agree that new nexus rules should reflect new ways of doing business (WOP, [34]). A payer based source rule may be easier to administer because the payer is identifiable and can withhold and also addresses concerns that deductible outbound service payments may erode the source-country tax base. However, payer location is not always the same as market location, use, consumption or value creation. A market-based or significant-economic-presence rule may better reflect remote and digital services but it may be harder to administer because it requires rules for user location, revenue thresholds, data evidence and allocation between jurisdictions. Fairer taxing rights (in theory) are not meaningful unless taxpayers and tax authorities can identify when they are engaged; (ii) tax base. Gross-basis withholding may be attractive because it is collected on payment; countries relying on gross-basis withholding generally find it “easy to administer” compared with determining whether a PE exists and attributing profits to it (WOP, [12]). However, gross basis taxation taxes receipts rather than profit and thus there is a concern that it may lead to “excessive” taxation where the rate does not reflect deductions, especially for low-margin services or loss-making businesses (WOP, [17]).

Net-basis taxation may be more accurate in theory because it taxes profit after expenses are deducted but it requires rules such as those on deductions, accounts, profit attribution, transfer pricing, filing obligations, audit powers and information exchange. Gross-basis withholding may then be administrable but too much of an approximation; net-basis taxation may be fairer in theory but also harder to apply. Net basis taxation aligns may have other benefits such as it better reflecting ability to pay, while gross-basis taxation relies on a more observable base but may distort activity or overtax low-margin firms (Barake, 2026). One workaround could be that the USP could set an “upper limit on source State taxation” while leaving the method of taxation to the source state (WOP, [38]).

This may make agreement easier but also too much flexibility could reduce certainty if different countries use different filing, withholding, refund and credit mechanisms; (iii) relief from double taxation and DTA interaction - relief from double taxation is central. Articles 23A and 23B OECD MTC 2017 provide exemption and credit methods for eliminating double taxation and Article 23B allows credit for foreign tax paid but only up to the relevant part of the residence-state tax (Article 23B(1), OECD MTC 2017). Credit relief may be limited and is considered to be potentially more complex (WOP, [7]).

Where a source state taxes a gross payment and the residence state taxes net profit, full relief may be difficult. Relief may also not fully address double taxation where the residence state does not regard the tax as creditable, where credit limits apply or where the source rule is not recognised by the residence jurisdiction. A protocol that expands source taxation without effective double-tax relief may then not be practically workable. (iv) a clear explanation of how it interacts with existing DTAs and domestic law. The TOR require the UNFC to address its relationship with other agreements, instruments and domestic law (TOR, [13]) and that the protocols are separate legally binding instruments and that each party to the UNFC may choose whether to become party to a protocol (TOR, [14]). This may create both opportunity and risk: opportunity in that a multilateral protocol could update DTA outcomes more efficiently than renegotiating DTAs one by one but also there is a risk of fragmentation if states join the UFC but not the USP, or if the USP does not clearly address priority, override and coordination. The USP must therefore do what the UNMTC cannot do by itself: translate a source-taxing policy direction into coordinated legal rules.

Conclusion

Candidates may conclude that the statement is generally supportable. Greater source taxation may be justified for remote and digital services, especially where Article 5 and Article 7 prevent effective source taxation but the USP must do more than authorise source taxation. It should provide clear nexus rules, define the tax base, set appropriate rate limits, coordinate with existing DTAs and ensure effective relief from double taxation. The USP will improve fairness only if fairness is translated into administrable rules, otherwise it risks replacing one contested system with another layer of uncertainty.

Question 3

There are a number of ways to answer this question and the below provides one possible schematic.

Candidates may consider how transfer pricing (TP) documentation relates to the arm's length principle (ALP); why Action 13 developed a three-tiered TP documentation framework - the master file, local file and CbC report and what each document is designed to do; how CbCR fits into transparency and administrative cooperation; and whether documentation supports, but does not of itself determine, substantive TP analysis.

Introduction

Article 9 OECD MTC 2017 provides a DTAbasis for TP profit adjustments where associated enterprises make or impose conditions in their commercial or financial relations that differ from those that would be made between independent enterprises. The OECD Transfer Pricing Guidelines (TPG 2022) provide guidance on applying the ALP. The Commentary also provides that accounts should not be rewritten where the associated-enterprise transactions have taken place on normal open-market commercial terms ie on an arm's length basis (Commentary on Article 9, [2]). This can be said to frame TP documentation as an administrative and evidentiary tool as it helps taxpayers and tax authorities test whether the conditions for an Article 9 adjustment are present but it does not replace the ALP analysis.

Role and scope of documentation

The ALP depends on comparability analysis, accurate delineation of the transaction, functions performed, assets used, risks assumed, contractual terms, economic circumstances and business strategies (TPG 2022, [1.6] and [1.33] to [1.36]). TP is therefore not mechanical but depends on evidence and judgment. Documentation matters because it requires taxpayers to articulate their TP position and gives tax authorities information to test that position. The OECD identifies three main functions of TP documentation: it encourages contemporaneous consideration of ALP compliance; gives tax administrations information for TP risk assessment; and provides a starting point for TP audits, although further information may still be required TPG 2022, [5.5] and [5.6]). Action 13 introduced a three-tier standardised approach to TP documentation: master file, local file and CbC report (TPG 2022, [5.16] and [5.17]; Action 13 Final Report 2015, Ch V, [16] and [17]).

TP documentation is considered to improve compliance monitoring and audit selection and as such may also affect taxpayer behaviour. There is a view that stricter TP rules can significantly reduce income shifting, which supports the practical enforcement role of documentation (rather than the claim that documentation can resolve the conceptual uncertainty of the ALP) (Lohse and Riedel, 2013).

Master file

The master file provides group-wide context, giving a high-level overview of the MNE group's business, TP policies, intangibles, financing and financial and tax positions (TPG 2022, [5.18] and [5.19]) and is described as a "blueprint" of the MNE group (TPG 2022, [5.19]). The master file may help a tax authority assess whether a local entity's TP position is consistent with the group's wider value business mode, value chain and allocation of functions, assets and risks. However, because the master file is intended to provide a high-level overview (rather than detailed evidence of the ALP for a specific controlled transaction), it may reveal structural TP risk but it does not usually prove, for example, whether a particular royalty, service fee, loan margin or distribution return is arm's length. That transaction level analysis is mainly the role of the local file.

The local file

The local file is more transaction specific and provides detailed information about material controlled transactions affecting the local jurisdiction, including financial information, comparability analysis and the selection and application of the TP method (TPG 2022, [5.22]). The information contained in the local file may therefore be closer to substantive TP evidence than the master file, because it is directed at material local transactions. However, the local file remains documentation rather than adjudication. While it is recognised that TP audits are fact-intensive and that tax authorities may need information beyond the documentation package (TPG 2022, [5.13] and [5.14]), the local file may narrow the relevant dispute but it does not remove uncertainty around comparables, risk allocation or method selection.

Country-by-country reporting

The CbC report provides aggregate jurisdiction-wide information on income, taxes paid and indicators of economic activity, plus information about constituent entities and their activities (TPG 2022, [5.24]; Action 13 Final Report 2015, Ch V, [24]). In this sense CbCR can be described as having the broadest systemic role but the weakest direct evidentiary value for pricing individual transactions. CbCR has risk assessment as its function and allows tax authorities to see whether profits, taxes and substance appear misaligned across jurisdictions. This is especially

useful for foreign-headed MNE groups where a local tax authority may otherwise lack global visibility. However, its limits are explicit: it is stated to be useful for high-level TP and BEPS risk assessment but should not be used as a substitute for detailed TP analysis and does not constitute conclusive evidence that transfer prices are or are not appropriate (TPG 2022, [5.25]; Action 13 Final Report 2015, Ch V, [25]). It should not be used to make global formulary apportionment adjustments (TPG 2022, [5.25]). CbCR tells a tax authorities where to look; it does not determine the adjustment. Here is a view that private BEPS Action 13 CbCR can deter corporate tax avoidance but has had only a limited effect on tax-motivated income shifting (Joshi, 2020). That supports a cautious assessment: CbCR may change behaviour through visibility and enforcement risk but it should not be presented as a complete answer to profit shifting.

CbCR applies to certain entities ie its EUR 750 million threshold excludes many MNE groups while still capturing groups controlling a large share of corporate revenues (TPG 2022, [5.52] and [5.53]). While this may be made administrative sense, it may support a view of CbCR as a large group transparency tool rather than as a universal TP instrument. CbCR also forms part of international administrative cooperation; under Action 13, CbC reports are generally filed by the ultimate parent entity and exchanged inter-government, including through the Multilateral Convention, DTAs and TIEAs (Action 13 Final Report 2015, Annex IV and Article 26 OECD MTC 2017). The OECD's 2025 Peer review shows this framework is now institutionalised, with over 120 jurisdictions having domestic CbCR frameworks and 101 having competent authority agreements in place (OECD CbCR Peer Review 2025, Executive Summary).

In addition, Australia and the EU have adopted public-transparency extensions: Australia's public CBC reporting and confidential CBC reporting are different measures, with public reporting periods beginning on 1 July 2024 and first publication expected in late 2026 (ATO, Public CBC Reporting, 2026). As noted above, the EU public CbCR regime, broadly, applies to large MNEs with global revenues above EUR 750 million and significant EU activity, with public disclosure beginning from 2026, obligations generally apply for financial years starting on or after 22 June 2024 (Directive (EU) 2021/2101; Accounting Directive arts 48d, 48g). While there is a view that public CbCR increases transparency but also creates risks of misinterpretation, especially because EU public CbCR gives detailed information for the EU and listed jurisdictions while allowing aggregation for most other third countries (Traut, 2024). That supports the point that public reporting may increase scrutiny but does not prove mispricing or avoidance.

Conclusion

Candidates may conclude that the three documents perform different but complementary functions. The master file improves group-level visibility but remains too high-level to prove the ALP outcome of specific controlled transactions (TPG 2022, [5.18]–[5.19]). The local file provides transaction-level support, but still depends on comparability, method selection and judgment (TPG 2022, [5.22]). CbCR may improve TP risk assessment and international cooperation, but it is aggregated and is expressly not conclusive evidence that transfer prices are or are not appropriate (TPG 2022, [5.25]). There is also a view that TP documentation rules can reduce outward profit shifting but may reduce real investment (Laudage Teles et al, 2026). This supports a balanced evaluation: TP documentation may have fiscal benefits, but it can also impose compliance burdens and real-economy costs. TP documentation may therefore make the ALP system more transparent, disciplined and enforceable. However, it remains a tool for administering the ALP rather than a substitute for it. Its contribution lies in visibility, risk assessment and cooperation; its limits lie in compliance burden, false positives, aggregated CbCR data and the continuing need for functional and comparability analysis.

PART BQuestion 4

There is no one way to answer the question and the following provides one possible schematic.

Candidates may start by considering the DTA and specifically that Article 7(1) gives Country A taxing rights over N1C's business profits unless N1C carries on business in Country B through a PE. If a PE exists, Country B may tax only profits attributable to that PE. Under Article 7(2), attribution is on a separate-and-independent-enterprise basis; any Country B profit may be modest, nil or loss-making (Commentary on Article 7(2), [15] to [17]).

Under Article 5(1), a PE requires a fixed place of business through which N1C's business is carried on. Article 5(4) excludes fixed places used solely for preparatory or auxiliary activities. Article 5(5) separately covers dependent-agent PE where a person habitually concludes contracts or habitually plays the principal role leading to contracts routinely concluded without material modification. The 2025 Update did replace the former home-office guidance in Commentary on Article 5(1), [18] and [19] with Commentary on Article 5(1), [44.1] to [44.21]. The Update describes the change as clarifying when a home may constitute a place of business and as an evolution of existing principles. Later Commentary may be relevant to a DTA based on earlier OECD wording where it clarifies existing provisions (Introduction, [33] to [36.1]). The following considers aspects of that Commentary.

Whether a PE exists should be determined by reference to the facts and circumstances applicable during the relevant period. Temporary interruptions of activities do not cause a PE to cease to exist. However, even if a fixed place of business would otherwise constitute a PE under Article 5(1), Article 5(4) will deem that place not to constitute a PE if the activities undertaken there are limited to preparatory or auxiliary activities (Commentary on Article 5(1), [32] and Commentary on Article 5(1), [44.3] and Commentary on Article 5(4), [44.5] and Reimer, 2022).

Period 1

Country A is most likely the only country with taxing rights over N1C's business profits, if any, connected with Suzie's Period 1 activities. From 15 October to 1 December, Suzie's role is Marketing Manager and her work is marketing strategy, licensing support and incorporation support. These activities appear preparatory to N1C's future Country B operations rather than an essential and significant part of N1C's cryptocurrency business (Commentary on Article 5(4), [59] and [60]). From 2 December to 31 December, her role changes to Sales and Business Development Manager, but that period is very short and the facts do not reveal any sales or contract-leading activity.

The home-office point during period 1 arguable as Suzie generally works from a dedicated room in Country B and N1C has no Country B office. However, Suzie is not required to work from home, uses her own laptop, spends 50% of her week in Country A, and sometimes works or meets people elsewhere. If the 2025 Commentary is applied as clarifying the PE concept, the relevant question is whether Suzie works from her Country B home or other relevant place for at least 50% of total working time. Because she spends 50% of her working time in Country A and some time in Country B outside the home, her home-working time appears more likely to be below 50% (Commentary on Article 5(1), [44.6] and Commentary on Article 5(1), [44.8] to [44.10]). Furthermore, Article 5(4)(e) may well apply: a fixed place covered by Article 5(4) do not constitute PEs while restricted to those activities (Commentary on Article 5(4), [75]). Article 5(5) also appears unlikely to apply because the facts do not show that Suzie concludes contracts or habitually plays the principal role leading to contracts routinely concluded without material modification by N1C. Country A is more likely the only country with taxing rights in Period 1; Country B would have taxing rights only if a PE were found and then only over profits attributable to that PE.

Period 2

Country A is more likely has taxing rights on the stated facts but Period 2 may involve less straightforward analysis. From 1 January to 30 November 2025, Suzie is Sales and Business Development Manager; her role is more commercial and business-facing than in Period 1. She meets prospective customers, business partners and regulators, uses the same dedicated home room and N1C has no Country B office. These facts may support a fixed-place PE argument under Article 5(1). However, this does not mean a home-office PE is automatic; Suzie is not required to work from home, she uses her own laptop, spends 50% of her week in Country A and sometimes meets people outside the home. Per the 2025 Commentary her home-working time appears likely below 50% of total working time, which points away from her home being a place of business of N1C (Commentary on Article 5(1), [44.8] to [44.10]). If the 50% threshold were met, the analysis would turn on all facts and circumstances, including commercial reason (Commentary on Article 5(1), [44.10] to [44.19]). While a commercial reason may be arguable because Suzie is involved in Country B expansion, the mere presence of customers, suppliers or other relevant persons in Country B is not enough by itself (Commentary on Article 5(1), [44.18]).

Article 5(4)(e) also warrants consideration: Suzie's work is pre-launch business development, meetings, calls, relationship-building etc while cryptocurrency licensing is suspended, Country A more likely retains taxing rights

because the Country B activities may remain preparatory. However, where Suzie's role develops into substantive sales or contract-leading activity from her home, Country B's PE argument may become stronger. Active involvement in important parts of sales negotiations may be an essential part of business operations and so not preparatory or auxiliary (Commentary on Article 5(4), [72]).

Article 5(5) can also be considered. However, Suzie's title, meetings etc. are not sufficient in and of themselves and the facts do not state that she has authority to conclude contracts or causes N1C routinely to enter contracts without material modification etc. Mere promotion or marketing that does not directly result in contracts (Commentary on Article 5(5), [88] and [89]), attendance at, or participation in, negotiations are not enough by themselves and whether this occurs "habitually" depends on the nature and frequency of the relevant activities (Commentary on Article 5(5), [97] and [98]). From 1 December to 31 December 2025, Suzie reverts to Marketing Manager. This again points towards licensing and establishment support.

Country A is more likely to have taxing rights in Period 2. Country B may have taxing rights only if Suzie's actual activities create a PE, especially if further facts were to show substantive sales or contract-leading activity under Article 5(5). Were a PE to exist, Country B may tax only profits attributable to that PE, which may be modest, nil or loss-making.

Period 3

Country A is most likely the only country with taxing rights over N1C's business profits, if any, connected with Suzie's Period 3 activities. Suzie is again Marketing Manager and her work involves strategy, licensing support and establishment of the new Country B company. Although the licence process has restarted, the new Country B company is not incorporated until 15 May 2026. Her activities therefore appear to remain establishment support rather than N1C's operating crypto currency business and appear preparatory or auxiliary (Commentary on Article 5(4), [59] and [60]).

Suzie spends 50% of her week in Country A and not all Country B time is spent at home. Her home-working time therefore appears likely below 50% of total working time, or at least not clearly above it. That points away from her home being a place of business of N1C (2025 Commentary on Article 5(1), [44.8]). Even if the 50% threshold were met, Article 5(4) would still need to be considered. A home that would otherwise satisfy Article 5(1) is not a PE if the activities carried on there are limited to preparatory or auxiliary activities (Commentary on Article 5(4), [44.5]). When Period 3 is tested by reference to the facts and circumstances applicable during that period, Suzie's continued use of the same home office may be relevant to permanence. Temporary interruptions of activities do not cause a PE to cease to exist. However, if Suzie's Period 3 activities are limited to licensing, strategy and establishment support, Article 5(4) may deem the home not to constitute a PE, even if Article 5(1) would otherwise be satisfied (Commentary on Article 5(1), [32] and Commentary on Article 5(1), [44.3] and Commentary on Article 5(4), [44.5] and Reimer, 2022). Furthermore, Article 5(5) also appears unlikely because no contract-leading activity is stated.

Country A is more likely to be the only country with taxing rights in Period 3. Country B would have taxing rights only if, contrary to the more likely view, Suzie's activities create or continue a PE in Country B. If so, Country B's taxing right would be limited to profits attributable to that PE, which may be modest, nil or loss-making.

Question 5

There are a number of ways to answer this question and the below provides one possible schematic.

It is anticipated that Article 17 is considered first, then Article 12, Article 7 and, residually, Article 21. Article 15 and Article 19 may be noted but very briefly.

Article 17 is the starting point because the payments are made to a professional sportsperson. Article 17 applies to income derived by a sportsperson from that person's "personal activities as such" exercised in the other CS and applies notwithstanding Article 15. Sponsorship and image-rights income is not automatically Article 17 income; the key issue is whether there is a close connection with Pablo's performance in Country H. Other Articles apply where there is "no close connection" (Article 17(1) OECD MTC 2017; Comm on Article 17, [9], [9.5]).

Article 15 is not central because the amounts are not Pablo's ordinary club salary from Club Horizon, and Article 17 in any event applies notwithstanding Article 15. Article 19 is not relevant because Vector is a private sportswear company, not a CS, political subdivision or local authority.

Pre-tournament promotional fee

Taxing rights are more likely allocated to Country G. Reasons include:

- The fee is paid before Pablo is selected to play in the World Football Finals.
- It relates to generic digital and retail advertising.
- The materials may be used even if Pablo does not later play in the finals.
- The distributor event and content shoot take place in Country H, so Country H has an argument, but those activities are generic promotional activities rather than match appearances, sponsor-equipment obligations or post-match appearances.
- The fee is therefore less likely to be income from Pablo's personal activities as a sportsperson in Country H (Article 17(1) OECD MTC 2017; Commentary on Article 17, [9], [9.5]).

Article 12 is possible but may not be the more likely treatment. The arrangement permits use of advertising materials featuring Pablo, so some image-use or copyright-related rights may be involved. However, the payment appears to be essentially for a generic promotional campaign and Pablo's promotional appearances, not for the use of a separately identified copyright, trademark or other IP right (Article 12(2) OECD MTC 2017; Commentary on Article 12 [11.6], [17.1], [17.4]).

If an isolated royalty component were identified, taxing rights over that component would generally be allocated to Country G, subject to the PE exception (Article 12(1), (3) OECD MTC 2017). Otherwise, the fee is more likely Article 7 business profits from Pablo's sponsorship and promotional activities, or Article 21 income residually. No facts clearly indicate that Pablo has a PE in Country H in respect of the promotional fee. Country H is therefore unlikely to have taxing rights under Article 7 (Article 7(1), Article 21(1) OECD MTC 2017).

Conclusion

The pre-tournament promotional fee is more likely taxable under the DTA only in Country G, with only a limited arguable Article 17 claim for Country H if part of the fee is shown to be sufficiently connected with Pablo's later tournament activities in Country H.

Tournament sponsorship fee

Taxing rights are more likely split by component with Country H being more likely to have Article 17 taxing rights over the tournament-linked component. Reasons include:

- The agreement assumes Pablo will play in Country H.
- The 30 per cent reduction clause suggests part of the fee is commercially linked to Pablo's match participation in Country H.
- Pablo in fact plays four matches in Country H.
- Pablo wears Vector boots during those matches.

- Pablo attends the sponsor event in Country H.
- Pablo makes the branded post-match appearance in Country H.

The boots obligation may be component with the strongest Article 17 link because sponsor branding worn during a match is specifically contemplated by the Commentary (Commentary on Article 17, [9]). There is also a view in the literature that obligations to use or wear sponsor-branded equipment during performance are strong examples of Article 17 cases (Cordewener, 2022). The branded post-match appearance may also fall within Article 17 because advertising or interviews in the CS may be covered where closely connected with the sports appearance (Commentary on Article 17, [9.1]).

Country G is more likely to have the sole taxing right over the broader global campaign component. Reasons include:

- Vector receives worldwide rights to feature Pablo's name, image and likeness.
- Pablo completes the post-tournament promotional shoot outside Country H.
- 40 per cent of the fee remains payable even if Pablo does not play in Country H, provided he completes that outside-Country-H shoot.
- Those facts point away from a close connection with Pablo's personal activities as a sportsperson in Country H.

Article 12 also needs to be considered. The fee is a mixed sponsorship arrangement: worldwide promotional use plus tournament-linked obligations. The arrangements do not separately identify a copyright, trademark or other IP right, nor do they allocate a defined part of the fee to such a right. Mixed payments may need to be broken down and characterised by reference to what each part is essentially made for (Commentary on Article 12, [11.6], [17.1], [17.4] and [18]).

The Commentary on Article 17, [9] also supports proportional treatment where advertising or sponsorship income is connected with named events, and Comm on Article 17, [9.2] to [9.3] supports allocation by reference to facts and circumstances where activities occur in different CS. Where the worldwide campaign component and the 40 per cent guaranteed minimum fall outside Article 17 and outside any isolated Article 12 royalty, they are more naturally characterised as Article 7 business profits, with Article 21 applying residually if Article 7 does not. No facts clearly indicate a Country H PE in respect of those broader promotional components, so Article 7(1) may then allocate the relevant profits to Country G (Article 7(1), Article 21(1) OECD MTC 2017).

Conclusion

Country H is more likely to have taxing rights under Article 17 over the part of the fee connected with Pablo's matches, Vector boots, sponsor event and branded post-match appearance in Country H. Country G is more likely to have the sole taxing right over the worldwide campaign component, the post-tournament shoot outside Country H and the 40 per cent guaranteed amount, unless a genuine Article 12 royalty component can be isolated. Country G must give double-taxation relief for any component properly taxed by Country H under Article 17 (Article 23 OECD MTC 2017).