THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2019

MODULE 2.08 – SINGAPORE OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Identify the primary rule that Singapore will tax Singapore sourced business profits regardless of remittance with section.

Identify the primary rule that Singapore will only tax foreign source income if it is remitted.

Identify the exemption for foreign branch profits and its conditions with relevant law.

Identify that the DTA will protect a Singapore resident company from taxation on its business profits in Country B unless it has a PE in Country B.

Note that there is no DTA with Country C.

Apply the rules above with particular emphasis on source:

- The source of business profits is not necessarily where the cash comes from or where it is banked.
- Manufacturing gives a large component of source.
- Design will play a part in determine a portion of source.
- Sales may play a part in determining source.

Conclude that there is some profit sourced in Country B.

Conclude that there is some profit sourced in Singapore.

Conclude that there is minimal if any profit sourced in Country C as even though the site is hosted there it is managed from Singapore.

Note that if there is any profit sourced in Country C, it may be protected from tax if it is not remitted, however some is remitted.

Note that the branch exemption would not be available in Country C.

Note that country B can tax under the DTA the profits attributable to the PE that is the factory.
Note that the branch profit exemption is likely available in relation to Country B.

Note that if the exemption is not beneficial, it will not be available.

Discuss the above in the context of Country B's tax rate and foreign tax credits.

The Singapore source income is taxable regardless of remittance and the fact that cash sales are banked offshore.

Question 2

Assess whether Joan becomes resident of Singapore for Singapore tax purposes.

Explore the residence tests and give sections.

Conclude that she will likely become resident due to the time test if not the other test.

Indicate that she will be a dual resident as she will remain a Country X resident.

Refer to DTA tie breaker test.

Discuss the tests.

Conclude likely allocated to Singapore.

Due to permanent home in Singapore and no longer in X.

Give reason in relation to apartments.

Note how allocation to Singapore means that the DTA might protect her from Country X taxation.

Note that it will stop country X from taxing Singapore and Country Y sourced dividends and interest.

Note that it will stop Country X from taxing salary even for short work period in X.

Discuss similar issues around capital gains including the fact that Singapore does not tax capital gains.

Note how DTA will reduce X tax on Dividends and interest from X as well.

Discuss Singapore taxation of wage – sourced in Singapore.

Note the Not Ordinarily Resident regime and consider possibilities. Conclude that it will not apply since they are only travelling “require[d] trips to other states in the region for periods of up to a week and totalling no more than five weeks per year” less than 90 days. NOR taxpayer must spend at least 90 days outside Singapore for business.

Note that Singapore will not tax foreign source dividends, interest and rents regardless of remittance with section. All foreign sourced income received in Singapore by Resident and Non-Resident individuals are exempt from tax per Section 13(7A) of the ITA with the exception of any Foreign Sourced Income received through a Partnership. Regardless of remittance due to the following features of Singapore scope of taxation/framework:

- Singapore operates a Territorial and Remittance scope of taxation.
- Only Resident and Non-Residents who do not receive foreign sourced income through a Partnership are exempt on foreign soured income received in Singapore.

Note that Singapore does not tax capital gains.

Discuss capital gain vs revenue gain in context of shares with cases law references.

Note that Singapore will not tax dividends from Singapore company with section. Singapore sourced dividends refer to dividends paid out of a Singapore tax resident company. Singapore dividends are paid out of a One-Tier Corporate Tax System i.e., Only taxed once at company level.

Note that Singapore will not tax bank account interest. Section 13(1)(z)(d) exempts interest income sourced on deposits placed with approved Singapore banks/finance companies per Finance Companies Act earned by any individual.

Question 3

Bigmin is seeking to have dividends and service revenue derived in Singapore by a Singapore resident company.

Discuss SingSub's tax residence:

- Discuss rule about central management and control.
- Discuss what it means and apply it.
- Note the two directors.
- Note the risk if these directors are found to be nominees.
- Note Singapore policy on ensuring substance before granting residence.
- Note that if it is not found to be resident. The outcomes of the strategy fail.

The dividends earned by a Singapore resident company will have a lower withholding tax under the Singapore Country Q DTA.

Note that the dividends will also likely qualify for tax exemption regardless of remittance – note section and conditions.

Tax exemption offered under Section 13(8) on Dividends will only apply if Section 13(9) conditions of:

- Headline tax rate of source jurisdiction > 15%.
- Foreign tax has been paid (which is the class here unless Foreign Tax was not paid due to reasons such as a tax holiday or availability of tax assets for off-set against Foreign Tax Liability. Then again, a possible recourse may be found in Section 13(12) for foreign tax paid in a bona-fide situation.

Note that the service fees are likely to reduce tax as deductions in Country Q.

Note that the service fees are likely sourced in Singapore – give reasons.

Therefor taxable but at Singapore's lower tax rate.

Perhaps some possibility of foreign source – then raise remittance issue etc – but not likely on available facts.

Some consideration of Singapore tax incentives but note limited scope of operations.
Note no Singapore tax on dividends paid by SingSub.

Students should also discuss Singapore's commitment to the OECD's inclusive Framework for implementing measures against Base Erosion Profit Shifting (BEPS):

1. Singapore supports the key principle that profits should be taxed where the real economic activities generating the profits are performed and where value is created.

2. Singapore's commitment to implementing the four minimum standards under the BEPS project:

   - Countering harmful tax practices (appropriate use of tax incentives);

   - Preventing treaty abuse;

   - Commitment to implementing CbC Reporting - Transfer pricing documentation i.e., facilitate automatic exchange of CbCR templates with other jurisdictions; and

   - Enhancing dispute resolution via mutual agreement procedure (MAPs) provided in bilateral tax treaties.

Make general comments on BEPS and substance, anti-avoidance and treaty shopping.

Focus on small scale. Consider substance in question? Applicability of Principle Purpose Test principles. May face challenges in obtaining Certificate of Residence?

Question 4

Discuss the residence/ source conflict and why there is some truth in the statement in the sense that double tax is minimised in this sense by territorialism.

Note that Singapore is not fully territorial even though it is true that much is exempt.

Mention the issue of remittance.

Note that there also needs to be a foreign tax credit regime in other countries and sometimes DTAs bring this about (If they claim worldwide taxation).

Note that double tax can also come for source/ source conflicts and the DTAs do resolve this.

Give examples.

Note that there can be conflicts in transfer prices that can lead to double taxation without a DTA.

Note that there can even be taxpayer definitional conflicts.

Give examples.

Note the other purposes of DTAs.

Marks for discussion, backup and balanced viewpoint.

Question 5

Discuss general GST imposition rules and why LegalCo will be covered. Section 8(1) GST Act.

Mention registration threshold. First Schedule GST Act.

Highlight zero rating and the different contexts in which zero rating applies on international services where necessary.

Note that international services under Section 21(3) of the GST Act are zero rated.

Discuss the parameters of an international service.

Note that it hinges on the service being provided to an overseas person.

Note that it also relates to use overseas.

Discuss what an overseas person is.

Note that the Singapore companies are not overseas persons and they are not likely to be zero rated (items 1 and 5 in the question).

Consider if overseas real property might possible be involved in part 5 – even if the company holds real estate, this doesn’t appear to be a service in direct relation to real estate and therefore is not exempt. Discuss the significance of belonging status? Differentiate between business establishment and permanent establishment.

Note that the Australian and Japanese companies seem to be overseas persons.

Note that item 3 is used overseas.

Discuss the situation with item four – is it used overseas?

As item 2 relates to property in Singapore it should be considered if it is a land contract. If so, it will not be zero rated. Discuss situs of supply.

Question 6

Marks for a balanced discussion that goes into some specific detail and justifies the positions taken.

Acknowledge that Singapore is an international financial centre;

Note that the features of Singapore's tax regime noted are beneficial in international tax structures:

- Explain why the DTA network is important.
- Explain the role of the low rates and incentives in multinational structures.
- Explain the additional narrow base features.

Explore the BEPS project generally and focus on international tax avoidance by multinational enterprises:

- Consider its focus on harmful tax practices.
- Note its focus on transparency issues.
- Note its focus on substance issues.

Note with examples how Singapore is well regarded in relation to transparency.

Note Singapore's push for substance in arrangements. Candidates should also refer to regular efforts by Singapore to review tax incentives. Candidates should also note that Singapore's existing incentive regimes already subjected to peer review by the Forum on Harmful Tax Practices (FHTP). FHTP 2017 progress report confirms that Singapore's existing incentive regimes are compliant with international standards.

Identify that there is an element of administrative discretion in the granting of certain incentives and the scope of the incentives. This could be seen by some as allowing deal making with business in a non-transparent manner. the specifics of Singapore's incentives can be hard to identify.

Explain that this also gives some control against abuse.

However it also arguably allows deal making with big business that can be viewed as non-transparent and bad.

Not tax sovereignty.

Question 7

Note that Singapore's concept of income for income tax purposes does not include capital gains.

Note that ordinary income can include a profit from an isolated venture or profit making scheme (with legal references).

Note that business profits are taxable under the Income Tax Act. Section 10(1)(a) income from Trade Business Profession or Vocation.

Based on the above three points the candidate should analyse the facts. Mention badges of trade test.

Peter's initial disposal of his long held collectibles is a capital gain and not a business profit or profit from an isolated venture.

Arguably his purchase and quick sale of Bob's collection is in the nature of a profit making scheme and ordinary income – discuss the factors.

Peter clearly goes into business at a certain point and his profits become taxable:

- Analyse the factors that lead to this.
- Discuss the difficulties in pin pointing the exact moment.

Major marks for case law and analysis.

For GST discuss the registration requirements.

Identify that Peter never crosses the compulsory registration threshold.