

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2019

MODULE 3.05 – BANKING OPTION

ADVANCED INTERNATIONAL TAXATION (THEMATIC)

TIME ALLOWED – 3¼ HOURS

This exam paper has **three** parts: **Part A**, **Part B** and **Part C**.

You need to answer **five** questions in total.

You must answer:

- **Both** questions in **Part A** (25 marks each)
- **One** question in **Part B** (20 marks)
- **Two** questions from **Part C** (15 marks each)

Further instructions

- All workings should be made to the nearest month and in appropriate monetary currency, unless otherwise stated.
- Start each answer on a new page and clearly indicate which question you are answering. If you are using the on-screen method to complete your exam, you must provide appropriate line breaks between each question, and clearly indicate the start of each new question using the formatting tools available.
- Marks are specifically allocated for clarity of presentation of your answers.
- The time you spend answering questions should correspond broadly to the number of marks available for that question. You should therefore aim to spend approximately half of your time answering Part A, and the other half answering questions in Parts B and C.
- The first 15 minutes of the exam is reading time. You will be allowed to annotate the question paper during this time; however, you will **not** be permitted to start writing or typing your answer. The Presiding Officer will inform you when you can start answering the questions.

For your information this paper is accompanied by:

Section 871m (26 U.S. Code § 871. Tax on non-resident alien individuals)

Agreement between the Government of the USA and the Government of Jersey to improve international tax compliance to and to implement FACTA

Agreement between the Government of the USA and the Government of Hong Kong for cooperation to facilitate the implementation of FATCA

OECD Common Reporting Standard

PART A

You are required to answer BOTH questions from this Part.

1. Bank Beta is a private bank offering discretionary portfolio management solutions and custodian services to high net worth clients domiciled in Asia. The bank books clients' holdings in its branches in Hong Kong and Jersey. Client securities are held in nominee accounts with sub-custodians in Bank Beta's name. Bank Beta's discretionary portfolio managed solutions include a mixture of United States and emerging market securities.

Hong Kong is a Model 2 Intergovernmental Agreements (IGA) country and Jersey is a Model 1 IGA country.

You are required to:

- 1) **Advise on the classification of Bank Beta's branches for Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) purposes, indicate who will be classified as 'reportable persons' in FATCA and CRS regulations, and confirm to which competent authority such persons must be reported.** (10)
- 2) **Explain the plausible classifications of the client accounts for FATCA and CRS purposes, providing an explanation of the classifications with reference to the FATCA IGAs, the US IRS FATCA Regulations and the Common Reporting Standard.** (15)

Total (25)

2.

- 1) You have recently begun working as a tax manager at GlobeBank in London, which has branches and subsidiaries operating across 28 different countries.

The chief financial officer (CFO) has asked you to provide the following information, relating to the background and implications of the Corporate Criminal Offence (CCO) for GlobeBank:

- a) **Provide a summary of the CCO regulations.** (10)
 - b) **Who can commit the CCO offences, and for whose actions are they responsible?** (4)
 - c) **What is meant by 'dual criminality', within in the context of the CCO?** (4)
- 2) The CFO has become increasingly concerned about GlobeBank falling within the scope of applicable bank levies, within the United Kingdom and also in other jurisdictions.
- a) **What were the annualised rates for the UK bank levy in 2018? How will this change by 2021, and how does it relate to the corporation tax surcharge?** (4)
 - b) **Paragraphs 66(1)(a) refers to double taxation relief (DTR) being afforded in respect of any 'equivalent foreign levy'. What characteristics must a foreign levy have to be considered an equivalent foreign levy?** (3)

Total (25)

PART B

You are required to answer ONE questions from this Part.

3. The United States enacted 'Section 871m' (26 U.S. Code § 871. Tax on non-resident alien individuals) in 2010, in order to ensure non-US persons could no longer avoid, partially or entirely, US withholding tax on US source dividend payment by using financial derivatives.

You are required to explain how the 871m regulations ensure that non-US persons using financial derivatives are subject to US withholding tax.

Your answer should consider in-scope securities, the identification of 871m transactions, the allocation of responsibilities, and the interaction of the regulations with the Qualified Intermediary Agreement in situations where the Qualified Intermediary is a Qualified Derivatives Dealer. (20)

4. 1) **Describe the different possible approaches for establishing the free capital attributable to the permanent establishment (PE) of a bank under the authorised OECD approach (AOA), according to the 2010 OECD Report on Attribution of Profit to PEs.** (14)

- 2) Delta Bank Ltd has a Tier 1 equity capital of £5.6 billion. The risk weighted assets (RWA) total £28 billion.

Its foreign PE holds RWA of £2.8 billion.

Comparable independent banks in the PE's country have a Tier 1 ratio of 15% while the regulatory minimum is 11%.

Delta Bank Ltd Balance sheet (£ billion)

Risk weighted assets	28	Tier 1 Capital	5.6
<u>Other assets</u>	<u>4</u>	<u>Debt</u>	<u>26.4</u>
Total	32	Total	32

Apply the BIS ratio capital allocation approach, thin capitalisation and regulatory minimum capital approach to Delta Bank Ltd. (4)

- 3) **As part of a functional analysis. Delta Bank Ltd's head of finance is interested in the attribution of middle and back office services. Does the OECD define middle and back office services within a banking environment?** (2)

Total (20)

PART C

You are required to answer TWO questions from this Part.

5. Bank Gamma offers global custodian services to clients, several of whom are seeking to invest in Japanese government bonds which it currently does not offer. The investors include foreign investment trusts.

Explain how Bank Gamma could offer its clients custodian services for Japanese government bonds. (15)

6. With effect from 1 January 2018, Germany implemented the 'Manufactured Dividend Rule' (sec. 6 para 2-3, no. 2 InvTA 2918), to prevent tax avoidance schemes on German source dividend income arising in connection with securities lending or repurchase transactions on German equity.

Explain the circumstances in which the rule applies, and the respective obligations of the lender and borrower. Your answer should consider situations in which the borrower is German and situations in which the borrower is non-German. (15)

7. On 25 May 2018 the Economic and Financial Affairs Council (ECOFIN) formally adopted Council Directive (EU) 2018/822, amending Directive 2011/16/EU with regard to mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (commonly referred as 'DAC6').

1) What is covered by mandatory disclosure under DAC6 (the Directive)? (9)

2) Discuss the timelines for the new rules on mandatory disclosure which apply to EU member states, including the timelines concerning reporting obligations. (6)

Total (15)

8.

1) With regard to intra group cash pooling, describe the significance of the ConocoPhillips Skandinavia AS / Norske ConocoPhillips AS v. Oljeskattekontoret (Norwegian Court of Appeals, 2010) case. (12)

2) What view did the OECD hold regarding intra group financing in BEPS Action Points 8-10? (3)

Total (15)