THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2026

MODULE 3.01 – EU DIRECT TAX 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 will **not** receive marks for any additional answers.

You must answer:

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

Further instructions

- You must use the appropriate currency, unless otherwise stated. Any monetary calculations should be made to the nearest whole unit of currency. Any necessary time apportionments in your calculations should be made to the nearest whole month.
- You must provide appropriate line breaks between each question, and clearly indicate the start of each new question using the formatting tools available.
- Marks may be 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.
- There is no separate reading time, so you can start typing your answers as soon as the exam begins. However, we recommend that you set aside some time to thoroughly read each question and plan each of your answers.

PART A

You are required to answer BOTH questions from this Part.

1. Company ABC is a multinational enterprise with its seat in Homeland, an EU member state. Homeland has a statutory corporate tax rate of 29%. ABC has several subsidiaries and branches across the EU and around the world.

   Your international tax advice has been sought by Company ABC's management on a number of scenarios.

   1) Subsidiary RED (RED) is resident in Redland, an EU member state. RED is a private company limited by shares, and is subject to corporate income in Redland. Company ABC acquired a 90% holding in RED 18 months ago; however, when RED distributes dividends to Company ABC, Homeland refuses to exempt these dividends from tax.

      Is Homeland's refusal compatible with EU law? (5)

   2) Subsidiary BLUE (BLUE) is resident in Blueland, another EU member state. Company ABC intends to benefit from the group consolidation regime (i.e. the consolidation of profits and losses at the level of the parent company) in Homeland. However, Homeland refuses to take into consideration BLUE's losses.

      When Company ABC complains, Homeland argues that Company ABC can always establish a permanent establishment (PE) in Blueland, rather than a subsidiary, in order to benefit from the group consolidation regime.

      Is this refusal compatible with EU law? Does Homeland have to allow Company ABC to use BLUE's losses for consolidation purposes, or does the option to establish a PE suffice? (5)

   3) Company ABC also has a PE branch (PINK) in Pinkland, another EU member state. Pinkland and Homeland have in place a double tax agreement that provides for the profits of the PE be taxed in Pinkland. Company ABC requests Homeland to utilise PINK's losses, although Homeland refuses to allow Company ABC to take them into account.

      Is Homeland correct to do so, according to EU law? (5)

   4) Company ABC has a further subsidiary (BLACK) in Blackland, an EU member state with a statutory corporate tax rate of 12%. Company ABC holds 80% of BLACK's capital.

      Despite being profitable, BLACK has not distributed any profits to Company ABC in the past two years and Homeland intends to apply its Controlled Foreign Corporation (CFC) legislation to Company ABC. Company ABC complains that this violates its freedom of establishment. Homeland says that the lack of distribution triggers its CFC rules because it appears to be an abusive structure.

      Can Homeland apply its CFC legislation in this case? Is it compatible with EU law? (10)

Total (25)

2. Mrs X is a national of EU Member State B, where she is employed as a frontier worker. However, she resides in EU Member State A.

Because she has retained her Member State B nationality, even after moving to Member State A, Mrs X's employment income (which is her only income) remains, according to the applicable double tax agreement (DTA) between Member States A and B, taxable also in Member State B (the state of employment and of her nationality).

Member State A applies the ordinary credit method for the elimination of double taxation and Mrs X is therefore entitled to a tax credit in her residence state (Member State A), equal to the tax paid in Member State B. However, the tax rate in Member State B is considerably higher than the tax rate that applies to her income in Member State A and therefore the tax credit is used only partially.

Mrs X argues that the tax system creates discrimination based on nationality, claiming that, if she did not hold Member State B nationality, her income would be taxable only in Member State A and therefore she would not have been subject to Member State B's higher income tax rate.

Moreover she argues that, had she acquired all of her income in Member State A (her residence state), she would have paid tax at the lower rate prevailing in Member State A; Mrs X claims that this amounts to discrimination as a result of her earning her income in Member State B. Consequently she argues that only a full tax credit (instead of the ordinary tax credit in Member State A) could remedy this discrimination.

You are required to answer the following questions based on the facts of the case, supporting your answer with references to case law of the Court of Justice of the European Union and the articles of the Treaty on the Functioning of the European Union:

1) **Is the use of nationality in the DTA as a connecting factor for the division of taxing powers between Member States A and B compatible with the free movement of persons?** (5)

2) **Is the ordinary credit method used by Member State A for the relief of double taxation compatible with the free movement of persons?** (5)

3) **Is this a case of discrimination or of disparity? What is the difference between the two?** (5)

4) **Is there an obligation under EU law to eliminate the international double taxation of income?** (5)

5) **What is the relationship between DTAs and EU law? In cases of conflict, which one will prevail?** (5)

Total (25)

PART B

You are required to answer ONE question from this Part.

3. Argonia, an EU member state, has adopted a law that allows the entities of multinational groups to reduce their Argonian corporate tax exposure by excluding so-called ‘excess profits’ (i.e. profits considered to arise from being part of a group and benefiting from synergies, scale, reputation, networks, etc.). This exemption is not available to standalone entities. The Argonian government’s objective in introducing this measure was to ensure that companies within multinational groups are not subject to double taxation.

   Argonia introduced the measure without any prior communication with any EU institution, but with a determination from its domestic competition authority that the measure “complies with all EU and domestic competition rules”.

   You are required to evaluate the measure from a state aid perspective, and assess whether the procedure followed is compatible with EU law. (20)

4. EU Member State C has recently introduced a special tax that applies to specific sectors in addition to its regular corporate income tax. Company C is tax-resident in Member State C and is subject to this special tax. In the 2025 tax year, Company C received dividends from its qualified EU subsidiaries.

   Member State C has applied the exemption method under Art 4(1)(a) of the Parent-Subsidiary Directive (PSD) and exercised the option under Art 4(3) PSD to disallow expenses at a flat-rate of 5% of the received dividends. Accordingly, Company C treated those dividends as 95% exempt for corporate tax purposes. At the same time, Company C was required to include all of its dividend income (both cross-border and domestic) to the tax base for the calculation of the special sector tax that applies in Member State C.

   The chief financial officer of Company C has some doubts as to the compatibility of the special sector tax with the provisions of the PSD, arguing that the imposition of the special sector tax violates the requirement that 95% of the cross-border dividends are tax exempt in Member State C. Member State C’s tax authority, to whom Company C filed a complaint, rejected the claim and argued that the protection of the PSD is limited to the corporate income tax and cannot extend to the special sector tax.

   You are required to prepare a report on the compatibility of Member State C’s domestic legislation with the PSD. Your analysis should include appropriate references to case law of the Court of Justice of the European Union. (20)

PART C

You are required to answer TWO questions from this Part.

5. Corporate tax harmonisation in the EU often follows a ‘minimum harmonisation’ approach.

   You are required to give examples of EU Directives that follow this approach and explain what it means. In particular, explain what member states are required to do and what they are not permitted to do. (15)

6. **In the context of EU law, what does the ‘neutralisation of restrictions by double tax conventions’ mean? Discuss whether member states may rely on bilateral tax conventions to neutralise restrictions on the fundamental freedoms, and give examples where appropriate.** (15)

7. Before the adoption of the ATAD (Council Directive (EU) 2016/1164 of 12 July 2016), which established rules against tax avoidance practices that directly affect the functioning of the internal market, various EU member states had adopted similar measures in their domestic legislation or had agreed on similar provisions in bilateral double tax agreements.

   What is the status of these domestic or agreement-based measures, following the adoption of the ATAD? (15)

8. **You are required to discuss the evolution of the concept of ‘beneficial ownership’, with specific reference to EU tax law Directives and to the case law of the Court of Justice of the European Union.** (15)