THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2023

MODULE 1

PRINCIPLES OF INTERNATIONAL TAXATION

TIME ALLOWED – 3¼ HOURS

This exam paper has **two** parts: **Part A** and **Part B**.

You need to answer **four** questions in total. You will **not** receive marks for any additional answers.

You must answer:

- **At least two** questions in **Part A** (25 marks each)
- **At least one** question from **Part B** (25 marks each)

Further instructions

- All workings should be made to the nearest month and you must use the appropriate monetary currency, unless otherwise stated.
- 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 a quarter of your time answering each of your four selected questions.
- 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 AT LEAST TWO questions from this Part.

1. The implementation of the BEPS minimum standards has highlighted the significance of the minimum standards in aligning taxation with substance requirements and ensuring transparency, while promoting both increased certainty and predictability.

   Critically evaluate the extent to which the above statement reflects the impact of the BEPS Minimum Standards. (25)

2. "Global formulary apportionment has sometimes been suggested as an alternative to the arm's length principle as a means of determining the proper level of profits across national taxing jurisdictions."

   OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022, Chapter I, Paragraph 1.16

   Provide an overview in which you compare the effectiveness of the arm's length principle and global formulary apportionment in preventing profit shifting by multinational enterprises. (25)

3. **Provide an overview in which you consider the nature of tax treaty override, and evaluate whether tax treaty override can ever be justified.** (25)

4. **Prepare a memo that:**

   1) Discusses one mechanism for dispute prevention and one mechanism for dispute resolution; and (10)

   2) Considers whether dispute prevention or dispute resolution is a more effective use of tax administration resources in managing the risk of double taxation. (15)

   Total (25)

5. Following a public consultation on the Global Anti-Base Erosion (GloBE) rules under Pillar Two, the OECD has released the 'Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)' guidance (2022), which outlines the use of safe harbours to minimise the compliance burden both on multinational enterprises (MNEs) and on tax administrations.

   You are required to discuss the application of each of these safe harbours, their usefulness in addressing the concerns raised by stakeholders about the complexity of the calculations and adjustments under the GloBE rules, and their respective impact on the compliance burden for MNEs under the GloBE rules. (25)

PART B

You are required to answer AT LEAST ONE question from this Part.

6. DynaCorp, a tax resident in Home Country according to its domestic tax law, is an emerging company in the renewable energy industry. Following a decision to expand its business, DynaCorp established a 100% subsidiary, AlphaCorp, tax resident in Country A according to Country A's domestic tax law.

Mr Ky, who is tax resident in Home Country, is employed by DynaCorp as a senior procurement specialist. As part of Mr Ky's employment responsibilities, he is required to make occasional trips to Country A to assess the procurement needs of ongoing AlphaCorp projects, meet with vendors, perform inspections and quality control on materials supplied by vendors, and inspect ongoing projects.

In the last quarter of year 0, AlphaCorp won multiple contracts and began executing these projects at the beginning of year 1. During year 2, Mr Ky was required to make three trips to Country A. The first two trips lasted for 35 days. The third trip was also due to last 35 days, but defects became apparent in some materials supplied for one of the projects, causing Mr Ky to extend his stay for an additional 35 days. During this third trip, Mr Ky went on a few day trips to Country B to hike some of Country B's famous trails. He returned to Home Country at the beginning of the last month of year 2.

Mr Ky has an employment contract with DynaCorp and derives a salary of $356,000 per annum, which is paid by DynaCoro. He was also paid a bonus by DynaCorp of $70,000 for staying on and finalising the project during his third trip.

Home Country and Country A have a double tax agreement (DTA) that is identical to the OECD Model Tax Convention 2017.

You have been notified of the following:

- DynaCorp does not have a permanent establishment (PE) in Country A, and AlphaCorp does not have a PE in Home Country;
- Mr Ky and DynaCorp are tax resident in Home Country for the purposes of the Country A / Home Country DTA;
- AlphaCorp is tax resident in Country A for the purposes of the Country A / Home Country DTA; and
- Country A and Home Country have the same currency, and both have fiscal years that coincide with the calendar year.

You are required to determine the taxing rights, if any, of Home Country and Country A, in respect of Mr Ky's salary and bonus. (25)

7. Azuria is a sunny island nation, and three years ago began hosting a prominent travelling music festival. This has resulted in a number of famous international, non-resident musicians performing in Azuria, before moving on to perform in other jurisdictions. The festival is a huge draw for tourists, whose spending has helped to boost the small Azurian economy.

The Azurian government has historically avoided engaging with many of the concepts that underscore the international tax landscape. The country has a very basic income tax system and currently has no double tax agreements (DTAs). The Azurian tax administration (the ATA) has been significantly under-resourced for a number of years, with the government's limited resources being focused on continuing to increase tourism in order to raise tax revenues and grow the economy.

A recent election has resulted in a change in government. The new prime minister of Azuria is focused on bringing the country's tax policy up-to-date and making Azuria a contributing member of the international tax community. The government is confident that the musical festival will continue to be an annual fixture, and now intends to focus on other forms of revenue generation, such as income tax.

The ATA has engaged with a number of jurisdictions with more sophisticated tax systems in order to obtain technical assistance and capacity building. The ATA has also hired a number of experts from these countries, to assist with the day-to-day running of the tax administration. However, everyone acknowledges that a lot of work is required to bring Azuria's tax system into the 21st century, and certain things will need to be prioritised over others.

The outside experts providing technical assistance have suggested that the Azurian government's first priority should be to negotiate and implement double tax agreements (DTAs).

The ATA has asked the outside experts for specific advice on the taxation of income earned by the non-resident performers at the annual music festival, on the basis that Azuria enters into DTAs that are identical to the OECD Model Tax Convention 2017 (OECD MTC 2017).

The performers earn the following income while in Azuria for the festival:

- A fee for their involvement at the festival, paid by the Azurian festival organisers directly to the performers; and

- Payment for a television performance made immediately after performing, which is paid by the Azurian television network (ATVN) to each performer's agent.

To date, Azuria's domestic legislation has imposed income tax on the non-resident performers, but very few have adhered to the tax rules and, since the non-resident performers only work in Azuria for a few hours each year, the ATA has not pursued these outstanding tax liabilities. The ATA wants to know if this is the correct way for it to continue treating these performers if it enters into DTAs that are identical to the OECD MTC 2017.

As a member of the team of outside experts, you are required to:

1) **Advise the ATA on what taxing rights Azuria would have over the income of the non-resident performers at the annual music festival, in the event that Azuria has entered into DTAs that are identical to the OECD MTC 2017.** (15)

2) **Provide guidance to the ATA on how it may use the exchange of information provisions in Article 26 of the OECD MTC 2017, to gather further information on non-resident performers who owe taxes as a result of their performance at past musical festivals in Azuria, assuming Azuria has entered into DTAs that are identical to the OECD MTC 2017.** (10)

Total (25)