

# THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

December 2023

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## MODULE 3.01 – EU DIRECT TAX OPTION

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### ADVANCED INTERNATIONAL TAXATION (THEMATIC)

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TIME ALLOWED – 3¼ HOURS

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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

- All workings should be made in appropriate monetary 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. Fund WOW is an investment fund set up in EU Member State Q. When Fund WOW distributes dividends to its investors in State Z, a non-member state, Member State Q imposes a 15% withholding tax in accordance with the double tax agreement (DTA) between the two states.

According to Member State Q's domestic law, an exemption from withholding tax on dividend distributions from investment funds is provided if both of the following conditions are met:

- the investment complies with the relevant EU legislation on investment funds, and
- the investment fund's registered office is located in Member State Q.

Fund WOW has challenged Member State Q's legislation as being incompatible with EU law.

**You are required to:**

- 1) **Discuss whether EU law is applicable in the present case and, if so, whether Member State Q's legislation is compatible with EU law.** (12)
- 2) **Explain whether your answer to 1) would be different if Member State Q's legislation instead stated that the withholding tax exemption will apply only if it can be shown that the investors are actually taxed on the income from the dividends they receive.** (7)
- 3) **Explain whether your answer to 1) would be different if no DTA existed between the two states.** (6)

Total (25)

2. Mr X, a resident of EU Member State A, has received an offer to work as an employee of Company Y, which is established and has its only premises in EU Member State B. Mr X lives with his family, close to the border between Member State A and Member State B, and Company Y's premises are located a few kilometres away across the border.

Mr X is contemplating the possibility of not moving to Member State B, but instead remaining in Member State A and commuting daily to Company Y's premises in Member State B. However, as this employment will be his only source of income, and as the double tax agreement between the two states provides for exclusive taxation of that income in the source state (Member State B), he is concerned that he will lose any personal tax benefits he has in Member State A, while he will not be entitled to any similar benefits in Member State B as he will not be a resident there.

Mr X has approached you for your advice.

**You are required to prepare a report and set out the protection, if any, that the fundamental freedoms provided in the Treaty on the Functioning of the European Union may provide to Mr X, with reference to relevant case law of the Court of Justice of the European Union on this matter.** (25)

## PART B

**You are required to answer ONE question from this Part.**

3. EU Member State C has introduced an 'energy tax' that applies to all corporations resident in Member State C, regardless of their owners' residence. The new tax is a highly progressive levy on turnover and, due to the way in which the tax was constructed, most of the companies affected are foreign owned taxable entities.

**You are required to discuss whether this measure is compatible with EU law. (20)**

4. The Government of EU Member State D is exploring the possibility of granting a tax exemption to certain investment vehicles that invest in real estate.

Member State D's domestic legislation currently allows several types of investment vehicles, including investment funds of various legal forms, but the government has proposed limiting the tax exemption to only one type of investment fund, which can only be constituted under the domestic legislation of Member State D. In order to develop the legislative proposal, the Finance Minister of Member State D has approached you for advice.

**You are required to provide a report, with an analysis of the issues that the government should consider from an EU law viewpoint, excluding state aid considerations. In particular, you should explain whether the legislation will be compatible with the EU fundamental freedoms, supporting your analysis with appropriate reference 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. You are required to discuss the circumstances in which losses incurred in another EU Member State can be used by resident corporations. (15)

6. The GloBE Directive (Council Directive (EU) 2022/2523) applies to entities located in the EU that are members of multinational groups or large-scale domestic groups meeting the annual threshold of at least €750 million of consolidated revenue.

**You are required to explain whether the GloBE Directive is, in your opinion, compatible with EU law, including the freedom of establishment and prevailing state aid rules and, if so, why?** (15)

7. On 25 October 2016 the European Commission relaunched its proposal for a Common Consolidated Corporate Tax Base (CCCTB), by submitting proposals for a Directive on a Common Corporate Tax Base (CCTB) and a Directive on a Common Consolidated Corporate Tax Base (CCCTB).

**You are required to outline the general policy objectives and main features of these proposals.** (15)

8. **You are required to explain the concept of the 'rule of reason' in direct tax matters, and to provide examples of rule of reason justifications in the area of direct taxation.** (15)