THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2021

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

- All workings should be made to the nearest month and in appropriate monetary currency, unless otherwise stated.
- As you are using the online 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 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. EU Parent owns a 25% interest in a company (Non-EU Co), which is resident in a non-EU and non-EEA state. The EU member state in which EU Parent is resident denies tax deductions on costs relating to ownerships of 25% or greater in companies resident outside the EU. No other investor in Non-EU Co holds more than a 2.5% interest in the company.

   You are required to:

   1) **Explain, with reference to the Treaty on the Functioning of the European Union and the case law of the Court of Justice of the European Union, what claim EU Parent might have for protection from the national rule disallowing costs related to ownership.** (17)

   2) **How might your answer differ if the remaining 75% of Non-EU Co is owned by two investors who have no connection to EU Parent?** (5)

   3) **How might your answer differ if the tax laws of EU Parent's member state denied tax deductions on the costs of ownership in a non-EU company, regardless of the level of investment made?** (3)

   Total (25)

2. Mr C, your client, owns 100% of a company, DevelCo Ltd, resident in the EU member state of Homea. DevelCo Ltd has recently completed its development of an innovative process and has filed patent applications.

   Mr C wishes to reduce the amount of tax to be paid by DevelCo Ltd on profits that will be generated in future years from the patent rights, and has heard from friends at his golf club that EU law might protect his company if it transfers the patent rights 'offshore'.

   You are required to write a short note to Mr C, summarising the key points relating to how EU law might be applied to such a restructuring of DevelCo Ltd's business.

   You should make reference to the Treaty on the Functioning of the European Union and to the case law of the Court of Justice of the European Union, but you are not required to make reference to the Anti Tax Avoidance Directive. You are not required to demonstrate specific knowledge of national anti-avoidance legislation. (25)

PART B

You are required to answer ONE question from this Part.

3. The purchase of residential property in the EU state of Brionia, if used as a principal private residence, attracts property duty at a rate of 20%. The property duty is applied to the purchase price and is levied on the buyer. It is levied progressively on the capital invested, with duty paid on the purchase of a previous residence being credited against the duty amount that is due (which is calculated on the purchase price of the replacement residence).

The government of Brionia recognises that property price inflation might deter or hinder worker mobility, as workers who have moved to a different area and are seeking to buy a property of comparable size and quality to their previous residence might have to find the cash to pay the additional duty as a result of the inflated purchase price. To address this problem, the property duty scheme allows payment of duty on the purchase of the new property to be deferred to the extent that the purchase consideration is funded by the gain realised on the sale of the previous residence.

When the resident buys a third or subsequent property, earlier deferrals of duty are aggregated with any deferral due on the latest purchase. However, if the purchase price of the new property is less than the proceeds of disposal of the previous residence, the proceeds of disposal not reinvested are treated as representing part (or all) of the gains realised on the previous residences and the deferral permitted is reduced proportionately (to zero where none of the proceeds treated as representing the gains are reinvested). Part (or all) of the deferred duty then becomes payable.

Mr E has an accrued liability to property duty, representing duty payable on his cumulative gains realised on residential properties which he had purchased prior to the purchase of his current residence. He intends to sell his current residence in Brionia, and move to another EU member state where he has been offered a permanent position. The cumulative deferred duty will become payable following the sale of his current residence. Mr E intends to purchase a residential property in his new state of residence.

You are required to:

1) **Discuss whether the charge for deferred duty gives rise to a restriction to the exercise of Mr E's freedom of movement. Your answer should refer to the Treaty on the Functioning of the European Union and the case law of the Court of Justice of the European Union.** (12)

2) **What justifying grounds might be advanced by the tax authority of Brionia, by way of defence against an appeal by Mr E? Briefly comment on the proportionality of the requirement to pay the deferred duty immediately upon completion of the sale of the property.** (8)

Total (20)

4. Ms G resides in an EU member state, Homea. Homea levies capital gains tax on the net gains realised on all chargeable assets which are disposed of in the tax year. The Homea capital gains tax legislation defines a chargeable asset as being any moveable asset, wherever it is deemed to be situated, and any immoveable asset located within the territory of Homea.

In the 2020 Homea tax year, Ms G disposes of immoveable property located in another member state, Hostia, and realises a loss. Ms G's claim to set that loss against her other net gains taxable by Homea is declined.

You are required to:

1) **Explain, with reference to the Treaty on the Functioning of the European Union and the case law of the Court of Justice of the European Union, whether EU law can provide Ms G with any remedy. The freedom of movement engaged should be identified, and your answer should include analysis of whether the national rule gives rise to a restriction. You should consider any relevant grounds for justification, as well as the proportionality principle if you consider it relevant.** (14)

2) **Explain how your response might differ, if at all, if the Homea capital gains tax exemption for foreign immoveable property was limited to immoveable property taxable by the state in which the property is located, under the terms of a double tax agreement concluded between Homea and that contracting state.** (6)

Total (20)

PART C

You are required to answer TWO questions from this Part.

5. Mr S trades in his home EU member state, as a sole trader subject to income tax. He wishes to set up a branch in another member state, Hostia. His tax adviser advises him that a tax charge will be triggered in relation to the tax depreciated equipment that he proposes to transfer to the new branch.

Mr S learns that, while the home state tax charge will be calculated as the excess of market value of the equipment over its tax written down value, the future tax depreciation that he will be allowed by Hostia will be calculated by reference to the equipment's original cost, reduced by notional write-down over the period of ownership that it was in use in the home state. Mr S is disappointed to learn that the tax basis for the equipment in Hostia will be less than its market value at the transfer date.

You are required to:

1) **Explain, with reference to the Treaty on the Functioning of the European Union (TFEU) and the case law of the Court of Justice of the European Union (CJEU), whether Mr S can challenge the tax consequences of his proposed transaction, which results in a permanent loss of tax depreciation on part of his cost of the equipment transferred.** (8)

2) **Suggest, with reference to the TFEU and the case law of the CJEU, an alternative arrangement that could enable the equipment to be provided for use by the new branch without incurring the tax disadvantage.** (7)

Total (15)

6. Ms P was formerly employed in Originia, an EU member state that currently levies a 20% withholding tax on pension payments paid to non-residents. Originia residents are entitled to an annual personal allowance of €12,000 and the starting rate of income tax is 25% on a band of taxable income from €0-50,000. Ms P is currently resident in Hostia, a member state, in which she has part-time employment and currently earns €10,000 per annum.

Ms P also receives a pension from her former employment in Originia of €4,000 per annum. She is taxed as a resident in Hostia on her global income and is entitled to personal allowances of €9,000. Hostia levies a starting rate of income tax of 15% on the first €20,000 of taxable income.

You are required to answer the questions below:

1) **Assuming that Ms P is taxed as a non-resident by Originia and as a resident by Hostia, does Ms P have a claim available to her under the Treaty on the Functioning of the European Union (TFEU) that would enable her to reduce the overall amount of income tax paid? Your answer should make reference to the TFEU and the relevant case law of the Court of Justice of the European Union.** (6)

2) **If the double tax agreement between Originia and Hostia provides that residents of a contracting state may be taxed in their state of residence on income that is sourced from and taxed in the other contracting state, but subject to being able to claim credit relief for source state tax paid, what would Ms P's total tax liability be for the year in question? You may make any additional assumptions that are necessary, but should provide an explanation of your calculation.** (9)

Total (15)

7. ParentCo and a wholly owned subsidiary, SubCo, are resident in Originia, an EU member state, and have elected under the corporation tax legislation of that state to be taxed as a single entity in the name of ParentCo. Under the terms of this scheme, all transactions between the two entities are disregarded and ParentCo is subject to tax on the profits of both itself and SubCo.

   ParentCo has a second subsidiary, ForeignSub, that is resident in a different member state and, for that reason, is ineligible to elect to join the tax integration scheme. Both subsidiaries pay dividends to ParentCo. ParentCo is taxed on the dividends received from ForeignSub, but is entitled to claim credit relief for foreign tax borne on the profits distributed, but pays no tax on the dividends received from SubCo, which is disregarded in ParentCo's tax assessment.

   You are required to discuss, with reference to the Treaty on the Functioning of the European Union and the case law of the Court of Justice of the European Union, the apparently discriminatory tax rule applied to ParentCo's dividend income, under which ParentCo is subject to tax on the dividends received from ForeignSub but is not taxed on the dividends received from SubCo. (15)

8. Ms B is a resident of Homea, an EU member state, and has been accepted for a course provided by a private college located in Hostia, another member state. Homea provides grants for students attending similar courses provided by its colleges, but Ms B's application was declined because the college that she intends to attend is located outside of Homea.

   You are required to:

   1) Discuss, with reference to the Treaty on the Functioning of the European Union (TFEU) and the case law of the Court of Justice of the European Union (CJEU), whether Ms B has a claim against Homea in relation to the refusal to provide a grant. Would the situation be different if the college was publicly funded? (8)

   2) Ms B will receive a contribution to her living costs from her parents, but intends to find evening work to help avoid accumulating debt while she attends the course. Comment, with reference to the TFEU and the case law of the CJEU, on her income tax position in Hostia. (7)

   Total (15)

9. InvestCo, resident in the EU member state of Homea, owns 40% of the share capital of EngineerCo, which is resident in the member state of Lowtaxia. EngineerCo has seven other shareholders, all of whom are unconnected either to each other or to InvestCo and none of whom own more than 20% of EngineerCo. InvestCo procures from EngineerCo an item of machinery, for use by one of its subsidiaries resident in Homea, at a price designed to assist EngineerCo during a difficult trading period.

   You are required to discuss, with reference to the Treaty on the Functioning of the European Union and the case law of the Court of Justice of the European Union, the potential consequences of a challenge of the pricing of the supply by the Homea tax authorities. (15)