

# **THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION**

June 2022

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## **MODULE 2.08 – SINGAPORE OPTION**

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**SUGGESTED SOLUTIONS**

## **PART A**

### Question 1

Analyse and conclude that Plato is not a resident of Singapore.

Give legal references for central management and control determining residence.

M & C discuss by reference to directors, including legal reference for role of directors in CMC.

State that what is important is the source of the income with legal reference.

Note income is from trade.

Note source principles for trade with legal references.

Note that source is open to analysis and you need to consider what the taxpayer does in Singapore.

Identify – employee in Singapore engaged in buying in year one:

- Is this enough to establish source? Discuss.
- Probably not as mere purchasing in trade is not significant in common law.
- But full consideration always necessary.

Year one consider DTA – note business profits.

Note issue whether there is a PE.

Conclude in year one this is not likely due to exclusion for purchasing.

Year 2 sees expanded activity with Lin and website.

Consider what profit might be related to these under common law.

Consider full scope of what Lin is doing.

Maybe still no source but provide analysis.

DTA – consider whether there is a PE in year 2.

Analysis of all factors to see whether there is an argument for PE.

Consider dependent agent arm and contracting issue.

Consider place of business in light of that is going on.

Probably not a PE but offer discussion.

If you see some potential for PE, note what taxing rights arise:

- Profits attributable to PE.
- Note limited scope of these.

Remittance not an issue if income is sourced in Singapore.

Question 2

Part 1

Identify that Singapore residence is important, and give the section.

Identify different aspects of residence rule.

Identify that Sunny as a long term resident and citizen of Singapore will likely be a resident of Singapore despite time away if these are temporary absences.

Discuss absences and conclude that Sunny likely resident of Singapore for tax purposes.

Consider dual residence and DTA.

Highlight article and tie-breaker.

Consider permanent home and usual residence, closeness of ties issues under tie breaker.

Give article references.

Conclude likely allocated to Singapore due to home in Singapore and other factors.

Note consequence is that DTA constrains Country X from taxing income that is not linked to country X.

DTA does not stop Singapore tax claim.

Discuss Singapore's taxation of dividends :

- Identify exemption for local dividends.
- Identify exemption for individuals and many classes of foreign income.
- Give legal reference.

Discuss Singapore's taxation of interest:

- Identify exemption for local interest.
- Identify exemption for individuals and many classes of foreign income.
- Give legal reference.

Note that capital gains are not taxed with reasons and legal reference.

Note rent is taxable explain briefly treatment.

Explain wage is taxable if sourced in Singapore.

Discuss what is source of wage income.

Discuss issue of whether the wage from working overseas is incidental to Singapore job.

Consider that it will be taxable in Singapore if it is.

The wage for work in Singapore is definitely taxable.

Discuss DTA treatment of wage income in Country X – relevance of PE and whether Country X can tax it.

Note that Country X can only impose withholding tax on Interest and dividends from Country X due to DTA and cannot tax other income.

## **PART B**

### Question 3

Analyse and conclude that Noah is a resident of Singapore.

Give legal references for central management and control determining residence.

M & C discuss by reference to directors, including legal reference for role of directors in CMC.

Note that Noah taxable on:

- Its Singapore source income.
- Its foreign source income brought into Singapore.
- Unless exempt.
- The exemption most likely to be relevant is the exemption for foreign branch.

Discuss the conditions for exemption under 13(9):

- Subject to tax.
- Headline rate.
- Profit from branch.

Note that Country Y not likely to meet these; X is.

The issue then becomes a matter of source discussion.

Give case law.

Relate ultimate income to all business procedures and where they are conducted:

- Manufacturing in Country Y.
- Limited sales contracting in X.

For X, consider whether there is a PE for DTA purposes.

Consider whether a branch for 13(9) purposes.

No for both as only the prior year contract, independent retailer.

For Y no need to entirely consider as no DTA and 13(9) not likely to apply.

Under source rules though, the manufacturing in Y would give a considerable source X not likely to have much if any source.

So income sourced in Singapore and Y.

The amount sourced in Y would only be taxable if remitted, not exempt under 13(9).

The Singapore sourced taxable regardless.

Note that source has got nothing to do with where the cash flow arises on sale.

Full case references.

**PART C**

Question 4

Answer must explain the rationale for a statement like this.

Answer must critique this rationale.

Answer must consider limitations on this idea.

The core idea is that DTAs can protect you from original home and other country taxation.

This is because once you are a Singapore resident, DTA says that treaty partner cannot tax amounts unless within rules and limits to withholding tax in many cases.

Note the issue of dual residence.

Note the Singapore limits on residence for convenience in particular with companies.

Note the Singapore still taxes but might be low.

Note the other country may not give up much tax depending on situation.

Note that only applies to treaty partners.

Note there is a cost to becoming a resident as it cannot just be on paper.

Note foreign CFC rules, etc. might stop the plan from working.

Question 5

This question requires dealing with:

The principle that Singapore does not tax capital gains, including the basis for this.  
Singapore does tax business profits.  
Singapore does tax rent receipts.

Note that the initial rent will be taxable as rent.

The Bed and Breakfast is likely to be a business. It does not change the fact that any income is taxable.

A good answer will consider the tax deductibility of the renovation. If it is capital or not.

The property development then needs to be considered.

Is it a simple capital gain or is it income?

Consider if it is a business venture.

- Most likely is.
- Consider the organisation, the marketing, the scale, etc.

Note that this venture issue is separate from the B&B venture.

Note that a component of the total income from the apartment will possibly relate to the implicit capital gain on the land and should not be taxable.

Especially given the inheritance.

The commencement of the building development venture time point would need to be determined and related to the land value at that time.

Question 6

Note s13(4) a and b.

Note idea of a supplier belonging in Singapore.

Note s15(3) a and c:

- Business establishment.
- Critical discussion – what is it?
- Can you relate it to other concepts.
- Can you see issues as per DTA establishment issues?
- Fixed establishment. Same questions as above.
- Of taxpayer. What does 'of' mean?
- Most directly concerned with supply.
- Mostly or primarily? What do they mean? Practical issues?
- In a country.

Most directly concerned – resources of establishment were primarily used.

No establishment, etc. – then where resident.

Identify the concepts and provide critical analysis.

Question 7

Identify that s33 is a section aimed at tax avoidance schemes.

Main part of essay:

- Outline in broad terms the idea of tax avoidance.
- Mention case law or any guidance.
- Outline in broad terms what BEPS is understood to be.

Critically assess whether BEPS is tax avoidance or not.

Critically assess whether it can be tax avoidance.

Discuss difficulties in many cases in distinguishing one from another.

Consider which tax s33 is aimed at – Singapore taxation?

Consider whether Singapore taxation is necessarily the main issue in BEPS:

- It may be a factor.
- However it is often other country taxation that is at issue.

Conclusion.