THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

December 2022

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. "In addition to saving jurisdictions from the burden of bilaterally renegotiating these tax treaties, the Multilateral Instrument (MLI) results in more certainty and predictability for businesses and a better functioning international tax system for the benefit of our citizens."

   Angel Gurria, OECD Secretary-General (2006-2021), "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting: Information Brochure", May 2020

   You are required to critically evaluate this statement. (25)

2. The Manualian Revenue Authority (MRA) is considering whether, and how, to amend its system of relief from juridical double taxation.

   You are required to outline the various systems that are available, and the main policy considerations involved in adopting each option. (25)

3. **You are required to prepare a report that outlines:**

   1) Pillar One and Amount A; and (15)

   2) the arguments for and against the exclusion of regulated financial services under Amount A of the OECD's Pillar One. (10)

   Total (25)

4. **Outline the operation of Article 13 of the OECD Model Tax Convention 2017 (OECD MTC 2017), in relation to:**

   1) the domestic tax law of a contracting state applying a double tax agreement; and (13)

   2) the interaction between Article 13 and the other distributive rules of the OECD MTC 2017. (12)

   Total (25)

5. You are required to consider how countries may introduce controlled foreign company rules, and the extent to which such rules may be compatible, or otherwise, with the OECD Model Tax Convention 2017. (25)

PART B

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

6. Algero is a multinational entity with operations around the globe, including in Country B.

Algero is resident for domestic law purposes in Country A, on the basis that it:

(i) has a management team who are all resident in Algero and make all of Algero's key commercial decisions, and
(ii) is recognised as a separate legal entity for tax and company law purposes under the laws of Country A.

In addition to the management team, Algero has six directors, who live in various countries around the world. One of the directors is a resident in Country A and another in Country B, with the remaining directors living in other countries. The directors meet twice per year in different locations, with the meetings occasionally taking place in Country A or Country B. If directors are unable to attend a meeting in person, they attend remotely via teleconference from their respective countries of residence. The directors and the management team are two separate bodies of persons which have different roles within Algero; the directors sign off on decisions reached by the management team.

Algero is also a tax resident under the domestic law of Country B, due to its incorporation there. Algero's contracts are governed by the law of Country B and its headquarters are also in Country B.

The double tax agreement (DTA) between Country A and Country B is a covered tax agreement that also mirrors the OECD Model Tax Convention 2017, Article 4.

You are required to:

1) **Prepare a memo outlining the residence status of Algero, for the purposes of the Country A/Country B DTA.** (20)

2) **Consider how the situation might change, were Country A or Country B to introduce rules into their domestic tax law to provide an exemption from taxation for the foreign source income of certain foreign companies.** (5)

Total (25)

7. The government of Salia is concerned that its double taxation agreement network may not sufficiently protect its source state taxing rights in relation to the business profits of overseas entities.

The various double taxation agreements in Salia's network all include a provision that mirrors Article 5 of the OECD Model Tax Convention 2014. Salia has neither signed nor ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI).

You are required to prepare a report that:

1) **Outlines, at a general level, the changes made to the definition of 'permanent establishment' in the OECD Model Tax Convention 2017 (OECD MTC 2017).** (10)

2) **Summarises how Salia's source state taxing rights may change if its double taxation agreement network were to include provisions that mirror Article 5 of the OECD MTC 2017.** (5)

3) **Considers Article 5 of the OECD MTC 2017 as it relates to commissionaire arrangements.** (10)

Total (25)