# THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2025

# MODULE 2.12 – SOUTH AFRICA OPTION

## ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

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 South African rand, 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 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. AUPlat Ltd is a mining company that is incorporated in Country A. It is wholly owned by Company Z, which is incorporated in Country Z. MAPlat Ltd is a mining company that is incorporated in Country M.

AUPlat and MAPlat entered into a joint operating partnership agreement and were granted a mining license by the South African government in 2017, to operate a platinum mine in South Africa. Under the terms of the mining license, MAPlat holds a 60% participation right in the operation of the mine and AUPlat owns the remaining 40%. The mine and its management office are located in Rustenburg, South Africa.

An engineering design company, tax resident in Country M, developed a design model that is used for the hydraulic excavating operations of the mine and receives an annual payment for the mine's use of the design. Mr Peters, a Country M tax resident, is a mine hydraulic engineer and an employee of the Country M engineering design company.

Mr Peters was seconded by the engineering design company to work part-time at the mine in Rustenburg, to oversee the operation of its design model in the hydraulic excavation. Under the terms of his employment contract, Mr Peters was expected to stay at the mine in Rustenburg for six months each year to carry out his duties. All of the mine employees were required to join a pension fund in South Africa.

In 2018, AUPlat entered into a loan agreement with Company Z, requiring Company Z to loan AUPlat R500 million at a 12% interest rate; the loan was used to commence the mining operations in South Africa. AUPlat uses the income it earns from its portion of the participation right in the mine to pay the interest on the loan. MAPlat bought all of the mining equipment required to carry out the mining operations.

From 2020 the mine experienced protracted labour strikes, which hindered its mining operations and severely impacted MAPlat's financial viability. This, along with frequent power outages that further hindered mining operations, compelled MAPlat to sign an agreement with AUPlat, requiring MAPlat to sell to AUplat its 60% participation right in the mining license to operate the mine, which was granted by the South African government.

MAPlat also sold all the mining equipment to AUPlat. Since both the negotiations *and* the sale and purchase agreement were concluded in Country M between entities that are not resident in South Africa, MAPlat contends that it is not liable to tax in South Africa on this transaction.

Mr Peters was severely injured during the mining strikes in 2022 and has since used a wheelchair. He retired early and returned to Country M. In 2024 he received a payout from the pension fund.

You may assume that all countries involved have signed double tax agreements with each other that are based on the OECD Model Tax Convention 2017. All of the countries tax their residents on a residence basis. South Africa and Country A levy taxes on capital gains, but Country M does not.

**You are required to discuss:**

1) **The tax consequences of the loan interest that AUPlat pays to Company Z.** (5)

2) **The tax consequences of the annual payments that the engineering design company in Country M receives for use of its design model.** (5)

3) **The tax implications of MAPlat's sale to AUPlat of its 60% participation right in the mining licence.** (5)

4) **The taxation of the mining equipment sold by MAPlat to AUPlat.** (5)

5) **The tax implications for Mr Peters of the pension payout he receives.** (5)

Total (25)

2. You have been approached by a foreign corporation that intends to make its first investment into South Africa, through its wholly owned Mauritius incorporated and tax resident subsidiary. The Mauritian company will incorporate a wholly owned South African subsidiary. The South African subsidiary will borrow funds from a South African bank.

In addition, the Mauritian company will provide interest-bearing loan funding to the South African subsidiary via a shareholder loan. The shareholder loan will take the form of mezzanine debt, as it will be subordinated in favour of other creditors of the South African subsidiary. Thus, it will carry an interest rate of prime plus 10%. The loan will be denominated in South African rand and will have no fixed repayment terms.

All loan funding will be used to acquire equipment that will be used by the SA company to manufacture umbrellas for golfers.

The investor is seeking guidance from you on the treatment of the shareholder loan advanced by the Mauritian company to its wholly owned South African subsidiary.

**You are required to address the following matters:**

1) **Explain the currency control laws that the lender or borrower should be aware of, in relation to the loan to be advanced by the Mauritian company to the South African subsidiary.** (3)

2) **Explain why the absence of repayment terms may be of concern from an Income Tax perspective.** (4)

3) **Will the loan arrangement be subject to transfer pricing or other forms of interest limitation rules? If so, explain how these will work.** (15)

4) **Will withholding tax apply to interest on the loan? If so, explain how and to what extent it will apply.** (3)

Total (25)

## PART B

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

3. Bluewater Cruise Corporation (BCC) is a shipping company that is tax resident in Country P. BCC operates two ships (BCC-1 and BCC-2) in South Africa. For the last three years, BCC-1 has offered cruises for passengers which are restricted to the territorial sea between the South African coastal cities of Cape Town and Durban. BCC-1 hosts entertainment shows featuring private entertainers from Country P, who perform onboard the ship for a fee which is directly payable to them by the passengers.

BCC-2 transports people and cargo to and from Cape Town and Country P. BCC-2's operations include a travel agency office in Cape Town, where passengers buy tickets for their voyages.

Susan Dorego, the captain of BCC-2, is a South African resident and an employee of BCC. She spends seven months annually at sea, outside South African territorial waters or in Country P, and the remaining five months in South Africa. While in Country P, she resides in BCC's company housing. Susan has also been given a company car, a driver and security.

Susan's daughter Mary, aged 22 years and a South African resident, studies at a business school in Country P. In January 2024, Mary received a bursary from a South African student bursary scheme. She stays in the company house granted by BCC to her mother. To supplement her income, Mary works part-time at a restaurant in Country P, earning an equivalent of R10,000 per month.

Country P and South Africa have a double tax agreement, based on the OECD Model Tax Convention 2017.

**You are required to discuss the income tax consequences that arise from the transactions carried out by:**

**1) BCC-1;** (5)

**2) BCC-2 and its travel agency;** (5)

**3) the entertainers; and** (5)

**4) Susan and Mary Dorego.** (5)

Total (20)

4. A South African company intends to set up a manufacturing operation in Botswana, having been incentivised by the 15% corporate tax rate offered to manufacturers by Botswana.

The company intends to operate in Botswana through a branch, as the chief financial officer (CFO) has been informed that there is a double tax agreement (DTA) between South Africa and Botswana which will facilitate this structure and ensure that the company is able to maximise the Botswana tax breaks on offer. She now seeks your opinion to confirm this position.

**You are required to draft an opinion addressed to the CFO, explaining the following matters:**

**1) The South African tax treatment of the company, with regard to its manufacturing operations in Botswana;** (5)

**2) How the distributive rules in the Botswana-South Africa DTA will apply in this scenario; and** (10)

**3) Any relief measures that may be available to the South African-resident company, under the Botswana-South Africa DTA and/or South Africa's domestic tax law.** (5)

**You should only address the applicable South African tax considerations.**

Total (20)

## PART C

**You are required to answer TWO questions from this Part.**

5. Vinesh and his wife, Prenesh, are citizens and tax residents of Country X, where they live with their three children. Vinesh is the managing director of ShoeBiz Ltd, a lucrative shoe manufacturing company which is incorporated in Country X. Vinesh contacted Aisha, a tax consultant resident in South Africa, to advise him on how to set up a subsidiary company of ShoeBiz Ltd in South Africa. Consequently, in the 2017 tax year ShoeBiz SA Ltd (ShoeBiz SA) was incorporated in South Africa.

From March 2018, Vinesh made the decision to spend the first four months of each year in South Africa, to oversee the operations of ShoeBiz SA. Soon Vinesh fell in love with Aisha, and their daughter was born in 2019. Vinesh bought a house in Durban, South Africa, where Aisha and their daughter live.

When Prenesh learned of Vinesh's infidelity, the resulting acrimony prevented Vinesh from visiting his family in Country X. In March 2025, when Vinesh's father died, he travelled to Country X for the funeral and spent four months there attending to the marital problems between him and Prenesh. He returned to South Africa to oversee his businesses but intends to go to Country X regularly, as initially planned, to see his family.

There is a double tax agreement (DTA) between South Africa and Country X, based on the OECD Model Tax Convention 2017.

1) **You are required to provide an opinion on Vinesh's tax residence status in South Africa. You should refer to the relevant DTA provisions, sections of the Income Tax Act, court cases and SARS interpretation notes.** (5)

Mr Smith, a resident of Country Y, is one of the directors of TK (Pty) Ltd (TK), a South African incorporated coal mining company. The other directors of TK are Johannes and his wife Mary, who are both South African residents. In the 2024 tax year, Johannes and his wife Mary had a car accident in Johannesburg that caused severe injuries, and both were hospitalised for six months.

Consequently, no board meetings were held in the 2024 tax year. Mr Smith undertook all company contract negotiations and took the company's strategic and policy decisions. Mr Smith forwarded the documents regarding resolutions he had made to Johannes and Mary for their approval and signature.

Under Country Y's domestic tax law, companies that are effectively managed there are considered tax resident in Country Y. South Africa and Country Y have a DTA that is based on the OECD Model Tax Convention 2017.

2) **You are required to discuss the tax residence status of TK in the 2024 tax year. You should refer to relevant DTA provisions, statutory provisions and court cases.** (5)

Thabo, a South African resident, buys a word processing package for R5,000, from a shop that is operated in South Africa by ABC Ltd. ABC Ltd is tax resident in Country Z and a retailer of consumer electronics. The package includes the diskettes, a license agreement (to which Thabo has to agree before he can install the program), and two training manuals. Thabo intends to use the program on his home computer to write a book.

South Africa and Country Z have a DTA that is based on the OECD Model Tax Convention 2017.

3) **You are required to discuss whether the R5,000 paid by Thabo is considered a payment for services, a royalty, or payment for acquisition of software. In addition, explain how the amount will be taxed under the DTA between South Africa and Country Z.** (5)

Total (15)

6. **You are required to explain the South African Value Added Tax rules that allow the zero-rating of goods manufactured and supplied by a South African vendor to a qualifying purchaser, where the goods are to be sea freighted once they have been subject to further processing, repair, improvement, manufacture, assembly, or alteration (i.e. beneficiation) by another South African vendor.**

**You should include details of the documentation required by the vendors under such arrangements.** (15)

7. PLK Ltd, a company tax resident in South Africa, directly or indirectly owns subsidiary companies in various countries.

PLK Ltd owns all shares in Company X, tax resident in Country X. Company X leases a building in Country X for a 5-year period, and manufactures medicinal pills using purchased ingredients produced by Company Y. Company Y is incorporated in Country Y, and is also wholly owned by PLK Ltd.

Company X owns all of the pill-making machinery and employs 35 full-time and part-time employees on-site to produce the pills. Company X relies on outside independent contractors for security, cleaning, waste disposal and other incidental functions. Company X also employs two full-time managers to oversee the production process and for local record-keeping. Company X sells the pills to various foreign companies that are indirectly owned by PLK Ltd.

1) **You are required to discuss the applicability of South Africa's Controlled Foreign Company rules to the activities described above, with reference to appropriate sections of the Income Tax Act and relevant court cases.** (5)

Mr Tito, a tax resident in South Africa, is the managing director of Company R, which is incorporated in South Africa. The shares of Company R are wholly owned by a trust which was set up in Country S by Mr Tito. Mr Tito's children, Jane and Mary, are tax resident in South Africa and are the beneficiaries of the trust. Mr Tito recently extended an interest- free loan to the trust in Country S; the loan was used to fund Company R's business operations in South Africa.

2) **You are required to discuss the Income Tax implications of the loan extended to the trust. You should exclude any exchange control implications.** (5)

South Africa levies a corporate tax rate of 27%, while many neighbouring countries and other global trading partners have lower corporate tax rates. Some of these countries offer tax incentives to attract foreign investment, which can result in an effective tax rate far below 5%.

To attract foreign direct investment, South Africa also offers various tax incentives, for which many foreign subsidiary companies incorporated in South Africa are eligible. One such eligible company is Phamaco SA Pty Ltd, a subsidiary company of Phamaco Ltd. Phamaco Ltd is a multinational company whose parent company is incorporated in Australia and has group annual revenue of more than €750 million.

South Africa also has a number of home-grown multinational companies operating in other countries, which may benefit from the tax incentives those countries offer. One example is E-Herbals Ltd, a South African multinational herbal company that operates in various countries and has group annual revenue of more than €750 million. On 1 January 2024, the Global Minimum Tax Act 2024 took effect in South Africa.

3) **You are required to explain the international tax concerns that arise from the facts presented above, and how the legislation enacted by South Africa operates to address those concerns. Explain how the legislation operates to protect genuine tax incentives that promote foreign direct investment.** (5)

Total (15)

8. As a tax adviser, you have been asked to explain the exchange control rules that will apply to a South African company seeking to make foreign direct investment of R200 million (in the form of debt and equity) into a foreign company. The investment will give the South African company a 30% interest in the share capital of the foreign company.

**You are required to:**

1) **Explain the basis of exchange control laws, and the laws that allow for a foreign direct investment.** (3)

2) **Outline the information that must be provided in support of an exchange control application of this nature.** (5)

3) **Explain the applicable rules relating to ownership of a foreign investment of this nature.** (7)

Total (15)