

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2022

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. Azalia, an EU member state, has a compulsory national tax consolidation regime in place. ACo is the parent company of a group, established and resident in Azalia, that includes two subsidiaries established in Brigoria, another EU member state. Each of the Brigonian subsidiaries has a permanent establishment (PE) in Azalia.

After a re-organisation, one PE was absorbed by the other; the re-organisation did not trigger any tax in Brigoria, where it was considered a tax-neutral merger. However, the merger was subject to tax in Azalia as it was treated as a transfer of assets at market value.

The acquiring PE deducted part of the acquisition price with regard to the goodwill that belonged to the absorbed PE. As a result, the acquiring PE found itself in a loss-making position. The tax authority of Azalia has refused to allow the deduction of the incurred loss of the PE against the overall group taxable-income of ACo, as this loss could be offset against the taxable income in Brigoria of the company that owned the acquiring PE.

You are required to use the case law of the Court of Justice of the European Union to explain whether the law of Azalia infringes upon any of the Treaty on the Functioning of the European Union freedoms. (25)

2. XCo is incorporated under the laws of Xanthia, an EU member state, where it is considered tax resident. In 2017 XCo incurred losses of €2 million in Xanthia.

In 2019 XCo, without being dissolved, transferred its place of effective management to another EU member state, Zubia, where it had established a branch since 2018. As a result of this transfer, the tax residence of XCo was also transferred to Zubia in 2019.

In 2020 XCo, now tax resident in Zubia, sought a reduction of the taxable base in Zubia equal to the losses that it had incurred while it was a tax resident of Xanthia. The tax authority of Zubia denied the deduction of previous losses, arguing that, according to its national legislation, only losses from economic activities in that state were deductible from the taxable base in Zubia. Since XCo was no longer tax resident in Xanthia, it was unable to claim the deduction of those losses in Xanthia.

The chief financial officer (CFO) of XCo, facing the possibility of double non-deduction of the losses incurred in 2017, has approached you for advice.

You are required to draft a memorandum to the CFO explaining, with reference to the case law of the Court of Justice of the European Union, whether XCo can successfully rely on the Treaty on the Functioning of the European Union in challenging the decision of the tax authority in Zubia. (25)

PART B

You are required to answer ONE question from this Part.

3. Corland, an EU member state, has implemented the Parent-Subsidiary Directive. Its national tax law provides that cross-border dividends paid to non-resident shareholders with participations less than 10% are subject to a 25% withholding tax (WHT) in Corland. Dividends received by resident shareholders in the same circumstances are not subject to a withholding tax at the time of the distribution, but are included in the taxable base of the resident shareholder and subject to corporate income tax.

Dco, established in the EU member state of Della, is a loss-making company with a subsidiary in Corland. In 2021, Dco received a dividend from the subsidiary and was subject to withholding tax in Corland on the gross dividend amount. Even though the WHT was reduced from 25% to 15% as a result of the application of the double tax agreement between Corland and Della, the chief executive officer (CEO) of Dco still suspects that the levy of WHT may not be compatible with European Union law and has approached you for advice.

You are required to prepare a memorandum to the CEO and explain, with reference to the case law of the Court of Justice of the European Union, your assessment of whether Dco can successfully rely on any provisions of the Treaty on the Functioning of the European Union in challenging the withholding tax levied. (20)

4. The EU member state of Marina intends to introduce legislation to facilitate the acquisition, by tax resident companies, of substantial holdings in non-resident companies established in both EU and non-EU countries.

The proposed measure provides that a company which is taxable in Marina, acquires a shareholding of at least 5% in a 'foreign company' and holds that shareholding for at least one year without interruption, is entitled to a deduction of the financial goodwill resulting from the shareholding in the form of an amortisation, from the basis of assessment of the corporate tax for which the company is liable in Marina. In order to be classified as a 'foreign company', a company must be subject to an identical tax to the tax applicable in Marina and its income must derive mainly from business activities carried out abroad.

You are required to explain, with reference to the case law of the Court of Justice, whether such a measure is compatible with EU state aid rules. (20)

PART C

You are required to answer TWO questions from this Part.

5. In May 2021 the European Commission published the *Communication on Business Taxation for the 21st Century*, in which it announced its plans to table a legislative proposal setting out EU rules to “neutralise the misuse of shell entities for tax purposes”.

You are required to outline the initiatives taken by the Commission in relation to shell entities. (15)

6. **You are required to explain the principle of ‘mutual trust’ between EU member states, and its application in the field of mutual assistance for the recovery of claims, with reference to the case law of the Court of Justice of the European Union. (15)**

7. **You are required to outline the dispute resolution mechanisms that are available in settling cross-border tax disputes within the EU. (15)**

8. **What is the purpose of the EU list of non-cooperative jurisdictions, and how has it facilitated efforts to improve good tax governance in the EU? (15)**