THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

December 2016

PAPER 1

PRINCIPLES OF INTERNATIONAL TAXATION

TIME ALLOWED – 3¼ HOURS

You should answer **FOUR** out of the seven questions, including **AT LEAST TWO** from Part A and **AT LEAST ONE** from Part B.

Each question carries equal marks.

As you are using the on-screen 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.

All workings should be made to the nearest month and appropriate monetary currency, unless the question requires otherwise.

Marks are specifically allocated for presentation.

PART A

You are required to answer AT LEAST TWO questions from this Part.

1. **What are the objectives of a modern double tax agreement, and how do these objectives differ from the past?** (25)

2. "While tax may not be the primary driver for an outsourcing arrangement, tax considerations play an important role in the assessment of the benefits or pitfalls that may arise from such an arrangement."

   (Goradia and Desai, Cross-Border Outsourcing: Issues, Strategies and Solutions, International Fiscal Association, 2014)

   You are required to discuss this statement, in relation to the tax issues involved in a cross-border outsourcing arrangement. (25)

3. **You are required to discuss the development of the concept of harmful tax competition.** (25)

4. "Except for the United States, every major developed nation now operates a territorial system of taxation."

   You are required to discuss this statement. (25)

5. **You are required to explore and analyse state law and practice when determining the residence of individuals, particularly in relation to 'facts and circumstances' tests.** (25)

PART B

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

6. Fred is a qualified electrical engineer. He is tax resident at all material times in State A. State A has a double taxation convention with State B ("the DTC"), that corresponds to the OECD Model Convention in all material ways. During a particular tax year, Fred undertook some engineering work in State B as an employee.

State B's domestic income tax statute provides that tax on business income is levied on the "profits of a trade, profession or investment" (Income Tax Act 2015, section 1). This statute also provides that the performance of the duties of employment as an electrical engineer constitute "the carrying on of a trade" in State B for income tax purposes (Income Tax Act 2015, section 2). Under section 2, Fred's type of work is deemed to be a business activity for income tax purposes, with the consequence that Fred is taxed as a self-employed person irrespective of whether he undertakes those activities as an employee or as a self-employed person. This kind of deeming is not unusual in State B, and applies to a number of 'employment' activities.

The fiscal authority of State B regards the income from his electrical engineering activities as falling within Article 14 (Income from Employment) of the DTC, and subject to income tax in State B, on the basis that Fred is an employee, irrespective of the deeming provision contained in section 2 of the Income Tax Act 2015. However, Fred believes that his engineering income constitutes business profits, which fall within Article 7 (Business Profits) of the DTC and are exempt from State B income tax due to the fact that Fred did not have a permanent establishment in State B (see below).

Other information of potential relevance, that can be treated as settled between the parties, is as follows:

- Fred did not have a permanent establishment in State B within the meaning of Article 5 of the DTC during the time at issue.

- State B changed its domestic law in relation to section 2 of the Income Tax Act 2015 after the conclusion of the DTC.

- It is unclear to all concerned in what manner State A would tax Fred's income from his work in State B, if at all.

You are required to advise Fred of his likely income tax position in relation to State B. (25)

7. Jacqui was resident in the Republic of Namica before emigrating to Wernita in 2002. Having lived in Wernita for six years, Jacqui again moved, to Estrea, in 2008.

On leaving Namica, Jacqui was required under Namican domestic law to place certain assets under state supervision. The Wernita Revenue Authority (WRA) charged Jacqui tax in relation to certain years during which she was resident in Wernita, on the basis that she remained the legal and beneficial owner of the assets under state supervision in Namica.

In January 2012, the WRA asked for assistance from the Namica Revenue Service (NRS) in the collection of taxes totalling $10 million which arose in the period of Jacqui's residence in Wernita between 2002 and 2008.

A double taxation convention between Namica and Wernita had been concluded in 1999, which contained no provision for assistance in the cross-border collection of taxes.

On 31 March 2009, a protocol to the double taxation convention was signed. The protocol entered into force in November 2009 and inserted a new Article 27 (as per the OECD Model Convention) providing for cross-border assistance in the collection of taxes. At the time of the protocol, Namican tax law contained no specific provision for acts of conservancy to ensure that assets potentially subject to tax collection were not dissipated. By virtue of the Namica Tax Administration Act 2012 (TAA), such provisions were introduced with effect from 1 October 2012.

Under the TAA, acting on the request from the WRA, the NRS obtained a court order appointing a legal representative in whom was vested all of Jacqui's property in Namica (as long as the NRS was collecting taxes on behalf of the WRA), in order to protect those assets from a third party claimant.

You are required to advise Jacqui. (25)