



# THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

December 2016

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## PAPER 3.01 – EU DIRECT TAX OPTION

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### ADVANCED INTERNATIONAL TAXATION (THEMATIC)

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TIME ALLOWED – 3¼ HOURS

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You should answer **FIVE** out of the nine questions: **BOTH** questions from Part A; **ONE** question from Part B; and **TWO** questions from Part C.

Part A questions are worth 25 marks each. Part B questions are worth 20 marks. Part C questions are worth 15 marks each.

You should aim to spend approximately half of your exam time answering Part A, and the remaining half answering Parts B and C. The amount of time you spend answering each question should correspond broadly to the number of marks available for that question.

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 BOTH questions from this Part.**

1. In various cases, the Court of Justice of the European Union (CJEU) has ruled that the levy of a dividend withholding tax infringes upon the fundamental freedoms enshrined in the Treaty on the Functioning of the European Union (TFEU), particularly in cases in which non-resident shareholders were faced with a heavier tax burden than shareholders resident in the state of the company distributing the dividend.

**You are required to explain, with reference to the provisions of the TFEU, under which circumstances the levy of dividend withholding tax can be considered to be an infringement of the treaty freedoms. Your answer should discuss the various steps which the Court takes when it examines such cases, and should refer to relevant case law.** (25)

2. In certain cases, the Court of Justice of the European Union (CJEU) has ruled that statutory tax provisions which hamper the exercise of one of the fundamental freedoms of the Treaty on the Functioning of the European Union (TFEU) may be justified by the need to combat tax avoidance.

**You are required to explain the requirements which such anti-abuse provisions must meet, in order to be justified on this basis. Your answer should refer to relevant CJEU case law.** (25)

## PART B

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

3. Some EU Member States apply tax provisions that can be characterised as a form of 'exit taxation'. In various cases, the Court of Justice of the European Union (CJEU) has ruled on the question of whether a specific exit tax arrangement that applied to companies was in line with the fundamental freedoms.

**You are required to explain the case law of the CJEU in the field of exit taxation, including its key rulings in this area, and discuss any recent, relevant developments in this area of case law.** (20)

4. **Explain the meaning and functioning of the so-called 'proportionality principle', which the Court of Justice of the European Union (CJEU) applies in its case law. Your answer should refer to relevant case law.** (20)

## PART C

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

5. Avajal, an EU Member State, has a tax rule which states that, when a thin capitalisation rule applies, and interest is to a certain degree and as a consequence not tax deductible, this form of double taxation is to be neutralised through the provision of a comparable tax exemption to the recipient of the interest.

This exemption, however, is limited to domestic situations. In cross-border cases involving other EU Member States, including those which also apply a thin capitalisation rule, limited interest deductions in the other Member State are not neutralised by a comparable tax exemption on the interest in Avajal.

**Does Avajal's tax legislation violate the Treaty on the Functioning of the European Union (TFEU)? You are required to write a report outlining your opinion on this issue. You should use Court of Justice of the European Union (CJEU) case law to illustrate your answer.** (15)

6. John lives in Mordelia, an EU Member State, where he works on a part-time basis as a technician. John earns €10,000 per year in Mordelia. John lives close to the border of Navaya, a neighbouring EU Member State, where he earns €40,000 per year from another part-time job, at a company established in Navaya. Article 23 of the bilateral tax treaty between Mordelia and Navaya contains an exemption method, in order to avoid double taxation.

Under Mordelian law, John is entitled to an annual tax-free base of €4,000 and is permitted to deduct alimony payments to his former spouse up to a maximum amount of €8,000 per year. Unfortunately, John is unable to make full use of both deductions in Mordelia, since he only earns €10,000 in that state. Navaya offers its resident taxpayers an identical tax-free base and an identical right to deduct alimony payments. However, since John is not a resident of Navaya, he does not benefit from these benefits under Navayan law.

**Can John claim any portion of these tax deductions in Navaya, under the case law of the Court of Justice of the European Union (CJEU), on the basis of the treaty freedoms enshrined in the Treaty on the Functioning of the European (TFEU)? You should use CJEU case law to illustrate your answer.** (15)

7. Sports Co. is a limited liability company established under the laws of Kastera, an EU Member State. The real seat of the company is located in a different EU Member State, Lorgand. Kastera considers Sports Co. to be a resident company, on the basis of its law of incorporation. Lorgand considers Sports Co. to be a resident company, due to its Lorgandic place of effective management (POEM). As a result, Sports Co. is a dual resident company.

Several years ago, Kastera and Lorgand concluded a tax convention for the avoidance of double taxation. According to the tie-breaker rule in Article 4 of the Kastera-Lorgand tax convention, for tax treaty purposes a dual resident company shall be considered to be resident only in its state of incorporation.

**You are required to explain, with reference to case law of the Court of Justice of the European Union (CJEU), whether the tie-breaker rule of the tax treaty between Kastera and Lorgand, in which nationality is a relevant criterion, is in line with EU law.** (15)

8. In 2015 and 2016, the European Commission concluded that the Netherlands and Ireland, respectively, granted Starbucks and Apple illegal state aid by means of tax rulings.

**You are required to explain under what circumstances a tax ruling constitutes state aid.** (15)

9. The Merger Directive provides for tax arrangements concerning cross-border mergers of companies from EU Member States.

Company A incurred losses in Xarilya, an EU Member State, where it is established. Company A has recently merged with company B, which is established in another EU Member State, Yushia. The assets and liabilities of Company A were transferred to Company B, and Company A was wound up. No permanent establishment has been retained in Xarilya.

**To what extent do the Merger Directive and the fundamental freedoms offer Company B the right to offset, in Yushia, losses recorded by Company A which have not yet been compensated?** (15)