



THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 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.

Start each answer on a new page. If 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. **How are foreign entities classified for tax purposes?** (25)

2. “The OECD considers that the arm’s length approach is too resource intensive, and time consuming, to be of practical use to taxpayers and tax authorities. In other words, the OECD considers that the arm’s length approach is simply too difficult to use in deciding whether interest deductions within a group of companies are justified.”

(Miller and L. Oats, *Principles of International Taxation*, 5th edition, 2016)

You are required to discuss this statement. (25)

3. **Analyse the various events which constitute the process through which the provisions of a double taxation agreement become operative.** (25)

4. “Almost every work dealing with tax havens begins with the author acknowledging the practical impossibility of clearly defining a tax haven.”

(Mykola Orlov, “The Concept of Tax Haven: A Legal Analysis”, *Intertax*, vol. 32, 2004)

You are required to discuss this statement in the context of the various features that may be considered to justify the classification of a particular country as a tax haven. (25)

5. “The preference criterion must be of such a nature that there can be no question but that the person concerned will satisfy it in one State only, and at the same time it must reflect such an attachment that it is felt to be natural that the right to tax devolves upon that particular State.”

(Commentary to *Article 4(2) OECD Model Tax Convention on Income and on Capital*, paragraph 10)

You are required to discuss this statement in relation to the tie-breaker rule as it relates to dual-resident individuals in the OECD Model Tax Convention. (25)

PART B

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

6. As a tax official of State A, you have been asked to respond to several enquiries relating to the exchange of information between tax authorities. In all cases you should assume that all double taxation agreements (DTAs) are based on the OECD Model Tax Convention on Income and on Capital (OECD MTC) and are up-to-date.

- 1) The tax authority of State B has sent you a request for information which begins with an observation, from the previous year's data, that taxpayers in State B have often failed to disclose foreign source income. The government of State B has identified this problem as a major challenge to be addressed. Following the government's communication, the tax authority's request for information concerns Company X, which is established in State A. State B requests the names of all shareholders in Company X who are resident in State B, and information on any dividends paid to them in 2014-15. Company X is a very popular brand in State B, and the tax authority of State B suspects that the company has a large number of shareholders in State B.

You are required to provide a reasoned response to State B's request for information. You should assume that no additional details have been provided. (5)

- 2) Cynthia Palero is resident in State C. In the course of an ongoing tax investigation, it has been identified that Cynthia failed to declare her bank accounts with ArgoBank in State A. State C's tax authority also suspects that accounts may have been opened in the name of Cynthia's daughter, Chloe. As Chloe is the daughter of the beneficial owner, State C requests information on all accounts with ArgoBank held in both Cynthia and Chloe Palero's names. The information requested is held by ArgoBank.

Can State A refuse this request from State C's tax authority? (5)

- 3) Yesterday you reviewed and pre-authorized a request for information from the revenue department of State D. The file, however, is back on your table today as it has been discovered that a loan application which is subject to such exchange of information contains a secret trade formula.

How does this impact upon your response to the request for information from State D? (5)

- 4) Your junior colleague has just sent you an email, asking you to explain the meaning of "spontaneous exchange". He believes that information that has recently been obtained upon request from State E could be of interest to State B. You are aware that no agreement for exchange of information exists between State B and State E.

You are required to advise your colleague on the meaning of "spontaneous exchange" in this context. (5)

- 5) The Association for the Protection of Taxpayers' Fundamental Rights (APTFR) opposes an item of law in State A, which holds that the taxpayer has no right to be notified about the exchange of information. This process is considered to be an administrative (investigation) stage.

The head of your department has asked you to outline potential arguments in favour of, and against, a possible notification procedure. (5)

Total (25)

7. Amerto is a company resident in the Republic of Arbella. The company produces packaging for ready-to-eat meals. Amerto would like to expand its trading to a second country, Baronia, which has a fast-growing market. A business case for this move is very strong. However, Baronia has a higher corporate tax rate than Arbella, which creates a potential tax risk for Amerto.

Four possible ways in which the company may operate have been put forward by the legal department, and the Tax Director of Amerto has asked you to prepare a memorandum explaining the tax consequences of the four options:

- (a) Selling through an office of Amerto with its own local sales team in Baronia.
- (b) Establishing a local subsidiary in Baronia, which will purchase goods from its foreign parent and will thus take fully responsibility for selling the goods to customers in Baronia (a buy-sell arrangement). Amerto will need to send its Quality Director to Baronia on a regular basis to ensure that the subsidiary complies with its obligations under contracts concluded with Amerto. The Quality Director will use the local subsidiary's premises.
- (c) Setting up a commissionaire arrangement, under which a vendor will sell products in Baronia in its own name but for the account of (and at the risk of) Amerto. Amerto will remain the owner of these products prior to their sale. The domestic laws of Baronia provide that contracts concluded by an agency under commissionaire arrangements are not legally binding on a principal.
- (d) Selling Amerto's products through several independent agents in Baronia.

Furthermore, the Tax Director of Amerto has recently attended a seminar on the G20/OECD Base Erosion and Profit Shifting (BEPS) project. She noted that Action 7 seeks to prevent artificial avoidance of permanent establishment (PE) status, and has asked you to determine whether these developments may create any potential risks in this respect.

You may assume that the double taxation agreement (DTA) between Arbella and Baronia is identical to the OECD Model Tax Convention on Income and on Capital (OECD MTC).

You are required to write a memorandum, explaining the following matters:

- 1) The tax consequences of the suggested modes of operation in Baronia. (20)**
- 2) Any relevant developments under Action 7 of the G20/OECD BEPS Action Plan. (5)**

Total (25)