THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2016

PAPER 3.01 – EU DIRECT TAX OPTION

ADVANCED INTERNATIONAL TAXATION (THEMATIC)

TIME ALLOWED – 3¼ HOURS

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.

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 BOTH questions from this Part.

1. Some EU Member States apply, as part of their corporate income tax systems, a 'fiscal unity' regime, or a group integration regime limited to domestic subsidiaries. In such a regime, the domestic group companies are treated as one taxable entity. This entails certain tax advantages to the domestic group, which are not present in a cross-border setting.

   You are required to explain the case law of the Court of Justice of the European Union (CJEU) regarding the application of this type of regime, and whether these types of national rule constitute a possible infringement of the treaty freedoms enshrined in the Treaty on the Functioning of the European Union (TFEU). (25)

2. The personal income tax regimes of most EU Member States distinguish between resident and non-resident taxpayers. Resident taxpayers are generally entitled to tax benefits related to their personal and family circumstances, such as a tax-free allowance, and deduction of costs related to healthcare, alimony payments or mortgage payments. In many cases, non-resident workers are not entitled to such tax benefits.

   You are required to explain, with reference to relevant case law of the Court of Justice of the European Union (CJEU), the conditions under which non-resident workers must be treated in an equal manner to resident workers, in relation to tax benefits linked to their personal and family circumstances. (25)

PART B

You are required to answer ONE question from this Part.

3. The Court of Justice of the European Union (CJEU) has ruled in a number of cases, concerning the proposed obligatory deduction of currency losses when set against the provision of the treaty freedoms of the Treaty on the Functioning of the European Union (TFEU).

   The case law in this area has included situations involving a foreign permanent establishment, as well as situations involving a foreign subsidiary (for example, a shareholding in a foreign company).

   You are required to discuss the aforementioned case law, and the general lines of reasoning of the CJEU. (20)

4. Company L is a limited liability company resident in Ligertas, an EU Member State. Company L holds 60% of shares in a limited liability company resident in Japan. The Japanese company has distributed dividends to its shareholders.

   Under the tax laws of Ligertas, dividends received from shares in domestic companies are tax exempt. However, dividends received from shares in non-resident companies are subject to tax in Ligertas, with the application of a credit method in relation to the taxation of underlying foreign profits.

   Company L claims that, on the basis of EU law, the dividends received from its shares in the Japanese company should be tax exempt.

   You are required to explain whether you expect Company L's claim to be successful, and the reasons for your decision. You should support your answer with reference to relevant Court of Justice of the European Union (CJEU) cases.
   (20)

PART C

You are required to answer TWO questions from this Part.

5. **You are required to explain the meaning of the 'most favoured nation principle'. Under the case law of the Court of Justice of the European Union (CJEU), are EU Member States obliged to apply this principle?** (15)

6. Mrs X, who is resident in Yelia, an EU Member State, received an Income Tax assessment from the Yelian tax authorities. Mrs X did not file any appeal against this decision. After the formal deadline to file an appeal expired, the Supreme Court of Yelia ruled that a specific provision of the Income Tax is in violation of the free movement of capital. Consequently, Mrs X understands that she has overpaid her Income Tax as her situation meets the same criteria as the case on which the Supreme Court ruled.

   Can Mrs X file an appeal against her tax assessment, despite the fact that the formal deadline for appeals has expired, by arguing that the tax assessment violated EU law? (15)

7. The aim of the Merger Directive is to facilitate cross-border mergers that do not trigger taxation. Instead of being taxed, mergers should be neutral from a tax point of view.

   To what extent does the Directive grant merging companies the right to transfer losses, which have not yet been compensated, from a transferring company to a receiving company? You should support your answer with reference to relevant Court of Justice of the European Union (CJEU) cases. (15)

8. "The aggressive tax-planning schemes applied by several multinational companies has fuelled the discussions at both EU and OECD level regarding Base Erosion and Profit Shifting (BEPS)."

   With what targeted measure(s) does the EU try to combat the misuse of hybrid loans? (15)

9. An EU Member State often levies Inheritance Tax in cases in which a resident or non-resident national with property has passed away. Such property may include immovable property, located in that specific Member State or elsewhere.

   Are Member States permitted to charge Inheritance Tax in cases in which a national of that State has passed away, irrespective of the individual's place of residence or the places in which properties are located? In other words, are Member States allowed to charge Inheritance Tax based purely on nationality? (15)