

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2017

PAPER 2.08 – SINGAPORE OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

- Sing is tax resident due to CM & C.
- Sing as a resident company is taxable on Singapore source income plus income remitted to Singapore.
- Give legal reference for this.
- Might note that foreign source branch profits are not taxable with legal reference (s13) but query applicability.
- Should note the importance of determining source of sales profit.
- Should discuss common law on source and business profits.
- Especially discuss cases focussing on source in trading and the importance of contracts. But note that it is a question of fact per Nathan.
- Should emphasise that the strategic activities in Singapore may result in source or partial source being in Singapore.
- Answer should fully explore this issue as its main focus.
- Apportionment of source between Singapore and the foreign jurisdictions might take some form of independent entity approach but uncertain.
- Should note that with Singapore source income there is no issue of it being excluded – fully taxable. It does not matter where the cash is.
- With the foreign source income, if it is not exempt as branch profits, it will only be taxed if remitted.
- Should note that with the DTA country, the profits attributable to the PE would be taxed in the foreign country and are likely to correspond with the foreign source portion.
- However note that there seems to be little evidence of any foreign branch operations in this scenario.
- Note that if income is found to have a foreign source and is not branch income then some may have been remitted and therefore taxable.

Question 2

- State Bill may become resident in Singapore under domestic law – reasons.
- Most critical being his lengthy stay in Singapore.
- Bill will be a dual resident under DTA due to Xodaria's domestic approach.
- Assess the relevance of the flats to the DTA tie breaker and how he may be allocated to Singapore for DTA purposes once he rents his Xodaria flat out.
- If allocated to Singapore then Xodaria can only tax his salary if he is in Xodaria for a half year or if paid by Xodaria entity – not the case here.
- Xodaria cannot tax any of his salary.
- Xodaria will be stopped from taxing the dividends from Singapore and the tax haven due to the DTA allocating him to Singapore.
- Xodariai will be able to tax the dividends from Xodaria companies but may be limited by a lower rate in the DTA.
- Discuss the possibility that the allocation may not be to Singapore and why. This is unlikely though.
- Singapore will only seek to tax Bill on his Singapore source income.
- It will not tax the dividends from Xodaria or tax haven even if remitted.
- Discuss the source of the wage income in view of the work periods in Xodaria and tax haven.
- Give legal references.
- Good answer will consider the not ordinarily resident regime.
- Xodaria will be able to tax the rent from the flat in Xodaria. Singapore will not seek to tax it.

PART B

Question 3

- Major focus should be on whether there is a tax avoidance aspect of the structure.
- Consider Singapore's rules about giving tax residence to companies when there is no substance.
- Consider limitation of benefits under treaties.
- The issue being the imposition of Sollie.
- The above may not be needed as the Sollie plan may not work on core principles.
- Examine law around CM & Control especially Malayan Shipping and Esquire Nominees.
- Sollie may not have CM & Control in Singapore due to the accountant arrangements – but this is uncertain and needs exploration.
- Consider the issue of capital gains.
- Explore why the property venture is likely to go beyond a capital gain.
- Consider any argument for it being a capital gain.
- Explain that capital gains are not taxed in Singapore.
- Conclude not capital gain and therefore will be taxed if sourced in Singapore.
- Explain the source – location of the land.
- Good answer will see if signs that some not sourced.
- Singapore will tax it regardless of remittance as sourced.
- Also regardless of Sollie residence.
- If Sollie non-resident – Singapore will not have reduced taxing rights over land.
- Good answer can look at taxation of dividends from Sollie.

PART C

Question 4

- Essay must identify the role the concept of substance has played in the BEPS debate.
- Must talk about the idea that low tax jurisdiction companies with no substance (PO box companies) are seen as a major problem.
- Identify why they are seen as a problem.
- Explain the tension between sovereignty, competition and abuse.
- Why is it ok when there is substance?
- Explain the link between Singapore's approach to corporate residence and the issue of substance.
- Explain that they claim to check for substance before issuing residence certificates.
- Explain that they are strict about it.
- Once having explained the above, a good answer will challenge it.
- Expand how BEPS can be argued to continue even with substance.
- However must frame the argument in the context of the tensions mentioned above.

Question 5

- Explain the general principles of GST imposition.
- Explain the rules and how they apply to imports.
- Explain how this may catch the shop front sales.
- Give some detail of technical operation.
- Give law.
- For income tax explain that Prinz is taxed on Singapore source income.
- Examine source rules.
- Explain business profits article of DTA and how this can prevent taxation.
- Explain how the shop is a PE.
- Explain how the website sale do not relate to this PE.
- Consider possible arguments to the contrary.
- Explain how shop sales are likely to be taxed but this is not the full profit only the retail profit.

Question 6

- Identify that the specifics of Singapore's incentives can be hard to identify.
- Explain that this gives some control against abuse.
- However it also arguably allows deal making with big business that can be viewed as non-transparent and bad.
- Explore the BEPS project generally.
- Consider its focus on harmful tax practices.
- Note its focus on transparency issues.
- Note its focus on substance issues.
- Note with examples how Singapore is well regarded in relation to transparency.
- Note Singapore's push for substance in arrangements.
- Note however Singapore's strong involvement in offshore business.
- Note that the BEPS actions points on treaty shopping and CFC regimes may indeed pose a risk to Singapore's regime.
- Conclude that it will remain to be seen in the details.

Question 7

- Note that Pow is a tax resident.
- That resident companies are taxable on Singapore source income plus income remitted to Singapore.
- Give legal reference for this.
- Discuss remittance.
- Fully explore the dividend exemption with legal reference (s13).
- Details of dividend exemption highly relevant.
- Consider headline rate rule.
- Consider underlying and direct tax issues.
- Consider the requirement for tax to be paid in addition to the headline rate.
- Apply to both foreign tax systems.
- Apply to both foreign companies.
- Note how it is unlikely for Country B.