# THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2017

# PAPER 3.01 – EU DIRECT TAX OPTION

## ADVANCED INTERNATIONAL TAXATION (THEMATIC)

TIME ALLOWED – 3¼ HOURS

This paper has **three** parts: **Part A**, **Part B** and **Part C**.

You need to answer **five** questions in total.

You must answer:

- **Both** questions in **Part A** (25 marks each)
- **One** question from **Part B** (20 marks)
- **Two** questions from **Part C** (15 marks each)

**Further instructions**

- All workings should be made to the nearest month and in appropriate monetary currency, unless otherwise stated.
- Start each answer on a new page and clearly indicate which question you are answering. 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.
- Marks may be allocated for presentation.
- The time you spend answering questions should correspond broadly to the number of marks available for that question. You should therefore aim to spend approximately half of your time answering Part A, and the other half answering Parts B and C.
- The first 15 minutes of the exam consists of reading time. You will be allowed to annotate the question paper during this time; however, you will **not** be permitted to start writing or typing your answer, or use a calculator. The Presiding Officer will inform you when you can start answering the questions.

For your information this paper is accompanied by:

- **Council Directive (EU) 2016/1164: the Anti Tax Avoidance Directive**

## PART A

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

1. **Explain the functioning of the standstill provision (Article 64 TFEU), in relation to the free movement of capital (Article 63 TFEU). You should use Court of Justice of the European Union (CJEU) cases to illustrate your answer.** (25)

2. Automotive Engineering is a company established in Carixia, an EU member state. Automotive Holding is resident in Switzerland and holds all shares in Automotive Engineering.

   In order to establish a new factory, Automotive Engineering has borrowed €50 million from Automotive Holding and repays the loan with an arm's length interest amount to Automative Holding. Under the tax laws of Carixia, interest payments are not tax deductible if a loan has been received from a non-resident shareholder with a majority participation.

   **Can Automotive Engineering successfully rely on EU law, in order to claim a tax deduction in relation to the interest payments? You should use Court of Justice of the European Union (CJEU) cases to illustrate your answer.** (25)

## PART B

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

3. According to the case law of the Court of Justice of the European Union (CJEU), the need to safeguard the cohesion of a tax system may justify measures which impact upon the fundamental freedoms of the Treaty on the Functioning of the European Union (TFEU).

   **Using Court of Justice of the European Union (CJEU) case law, explain the situations in which this justification may apply on matters of taxation.** (20)

4. Since 2009, nationals of EU member states hold EU citizenship (Articles 9 TEU and 20 TFEU) and can exercise specific rights as EU citizens (see, for example, Articles 10 TEU and 21 TFEU).

   **Explain the relevance of this development for taxation matters. You should use Court of Justice of the European Union (CJEU) cases to illustrate your answer.** (20)

## PART C

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

5. Tribertia, an EU member state, wishes to have the most competitive economy in the EU. In order to encourage the creation of groups of companies, Tribertia allows parent companies to deduct interest payments on loans in connection to the acquisition and establishing of domestic subsidiary companies. By contrast, interest payments related to the acquisition of non-resident subsidiary companies are not tax deductible, since these non-resident subsidiaries do not contribute to the generation of domestic income.

   **Explain whether these tax arrangements are in accordance with EU law. You should use Court of Justice of the European Union (CJEU) cases to illustrate your answer.** (15)

6. Until recently, Julia was a resident of Wisperia, an EU member state, where she worked as an employee in a bookshop. During the period of her employment, Julia's employer withheld wage tax on her salary.

   On 1 October 2016, Julia emigrated to EU Member State Z. In March 2017, Julia filed an income tax return in Wisperia and requested a partial refund of her wage tax, on the basis that she was entitled to a specific tax deduction. However, the Wisperia Tax Authority has refused to grant the refund as, under Wisperian law, refunds can only be granted to taxpayers who have resided in Wisperia for the entire year.

   **Explain, on the basis of the case law of the Court of Justice of the European Union (CJEU), whether the applicable tax law of Wisperia is compatible with EU law.** (15)

7. In July 2016, in order to combat tax avoidance by companies, EU member states adopted the Anti-Tax Avoidance Directive. One of the arrangements of this Directive concerns exit taxation. From 2020, in order to combat tax avoidance, all EU member states are obliged to apply an exit tax on assets in situations where a company transfers its place of residence to another member state. EU member states are allowed to collect the exit tax in five annual installments, and to charge interest due to the deferred tax collection.

   **The legislature of Member State D has passed legislation which will implement the above exit tax provisions from the Anti-Tax Avoidance Directive from 1 January 2021, without retroactive application to 2020. However, Member State D's tax administration seeks to impose exit taxes from 1 January 2020 in order to comply with the Directive. Can the tax administration rely on the Anti-Tax Avoidance Directive in order to impose exit taxes in 2020?** (15)

8. Mr Johnson lives in Taranta, an EU member state. He wishes to donate money to an established international charity, in both Taranta and another EU member state. Under the law of Taranta, only donations to resident non-governmental organisations are tax deductible.

   **Does this aspect of Tarantan law comply with EU law? You should use Court of Justice of the European Union (CJEU) cases to illustrate your answer.** (15)

9. Company A and Company B are residents of two different EU member states. Company A wishes to transfer a commercial building to Company B. However, if Company A sells the building, Company B will be required to pay real estate transfer tax amounting to 4% of the market value of the building. This tax is not due in the event of a merger between both companies. For this reason, the companies have chosen to merge.

**Can the tax administration concerned apply the anti-abuse provision of the Merger Directive, in the event of a merger between Company A and Company B?** (15)