



Chartered  
Institute of  
Taxation  
Excellence in Taxation

# THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2015

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## PAPER 2.01 – AUSTRALIA OPTION

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### ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

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TIME ALLOWED – 3¼ HOURS

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- You should answer **FOUR** out of the seven questions.
- Each question carries equal marks.
- Start each answer on a new sheet of paper. 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 Australian dollar unless the question requires otherwise.
- Marks are specifically allocated for presentation.

1.

- 1) Gromore Constructions Pty Ltd (Gromore) is an Australian incorporated company. Two of Gromore's five directors are Australian residents; the remaining directors are resident in Vanuatu. Directors' meetings are normally held in Vanuatu, but on occasion are held in Australia at the convenience of the resident directors.

In the year ending 30 June 2014, Gromore:

- a) derived a dividend from a wholly owned subsidiary resident in the United States;
- b) derived a dividend on its 6% shareholding in a company based in Vanuatu;
- c) derived a royalty from a wholly owned subsidiary resident in Thailand;
- d) derived a substantial capital gain from the sale of its shares in the Thai subsidiary; and
- e) held 100% of shares in a company resident in Hong Kong, where that company earned substantial interest income from its Hong Kong bank deposits as well as income from its construction businesses in Hong Kong, Vietnam and Singapore.

**You are required to explain how tax will be assessed, if at all, in Australia in respect of each of the first four items referred to above, and how the income derived by the Hong Kong company could, if at all, be taxed in Australia. (15)**

- 2) Gromore wishes to pay a dividend to its shareholders in the 2014/15 tax year, out of profits earned from the incomes referred to in (1), and including any dividends which might flow from the Hong Kong subsidiary.

There are four shareholders in Gromore as follows:

- a) an individual resident in Australia, who owns 30% of shares;
- b) a company resident in Australia, which owns 30% of shares;
- c) a company resident in the United States, which owns 20% of shares;
- d) an individual resident in Vietnam, who owns 20% of shares.

**Assuming that Gromore has no other income of its own out of which to pay a dividend, you are required to explain the Australian tax treatment of each shareholder in respect of the proposed dividend. (10)**

Total (25)

2. Bears Are Us Ltd (Bears) is a company resident in Thailand under Thai corporate tax residency rules. It is also centrally managed and controlled in Australia, where it conducts some business activities. Bears manufactures a line of unique teddy bears which can be taught to sing songs by their owner. It sells the bears throughout the world, but its primary markets are Thailand and Australia.

Bears has a wholly owned subsidiary, Mini-Bears Ltd (Mini-Bears), which is resident in Thailand but not in Australia. Bears pays a large royalty to Mini-Bears, as well as a large amount of interest. The royalty relates to intellectual property used by Bears in manufacturing the teddy bears. The interest relates to a loan that funds all of Bear's operations.

Bears pays a dividend to its shareholders, Bill and Beryl. Bill is tax resident in Australia and Beryl is tax resident in Thailand.

Mini-Bears facilitates sales all over the world, and receives a fee from Bears for the sales it organises in Australia. Mini-Bears employs a team of staff resident in Thailand to fly to Australia and other countries, for periods ranging from four to nine months at a time, to organise sales. The employees involved visit customers and encourage them to buy the teddy bears in volume. If a customer shows interest, they are told to contact Bears directly to arrange the purchase.

Thailand has a comprehensive income tax base and taxes residents on their worldwide income.

**You are required to outline in detail the Australian tax consequences of the above facts for Bears, Mini-Bears, Bill, Beryl, and the sales staff who are sent to work in Australia.** (25)

3. RDS is an entity established under the laws of a little-known tax haven, Volantis, which is located in the South Pacific. Volantis is an independent country, and has a rudimentary corporate and tax law code which recognises the separate legal and tax status of RDS. Volantis imposes a tax of 10% of the capital held by the company as at midnight on 31 December each year.

RDS earns the following amounts in the year to 30 June 2014:

- 1) A\$50,000 per year on a bank deposit held with the Volantis National Bank;
- 2) A\$40,000 royalties on the sale of books produced by RDS's Singapore associated company, the copyright of which RDS sub-licences to the associate;
- 3) A\$300,000 business income from a hotel run by RDS in Volantis; and
- 4) A\$500,000 as a capital gain from the sale of the hotel referred to above.

RDS is loosely owned through Volantis Approved Membership Rights (or VAMs as they are colloquially known), by a group of individuals who are resident to 55% in Australia, 30% in the United States, and 15% in Singapore.

VAMs are not shares, but they do increase or decrease in line with the profitability of RDS, and pay no annual return other than on a collapse of RDS. VAMs give no right to vote at any RDS meetings.

**You are required to identify how, if at all, Australia can tax the income of RDS under its tax laws, and identify any problems which arise in the application of the tax rules. You may make any assumptions which you feel are necessary for the furtherance of your discussion.** (25)

4. The following propositions have been made:
- 1) "Part IVA of the Income Tax Assessment Act 1936, Australia's general anti-avoidance rule, applies only to blatant artificial or contrived schemes."
  - 2) "The rules governing deductibility in Australia are overly complex and burdensome – Australia should abolish these rules, and simplify them by giving each individual a A\$1,000 tax deduction each year, with no further deductions allowed."
  - 3) "Australia's individual residency rules are in urgent need of simplification – as currently drafted they lack certainty."

**To what extent do you agree with each of the three propositions? In your answer, you should consider relevant legislative, administrative and case law issues and experiences. Where relevant, provide examples to explain the points you make.**

(25)

5. **You are required to assess each of the following cases, and determine whether (and why) each case would or would not be treated as a fringe benefit under the Australian Fringe Benefits Tax Act 1996.**

**In cases which are to be treated as fringe benefits, you should explain the applicable category of fringe benefit and the extent of the taxable value.**

- 1) Sarah is employed by an architecture firm, which has provided her with a new stereo unit for use at her home. The firm purchased the unit for A\$3,500 from a local retailer; Sarah contributed A\$1,200 to the cost. (5)
- 2) John is a bank employee whose employer has provided him with a personal loan, waiving the loan establishment fee which is ordinarily charged of A\$2,500 for loans up to A\$500,000. John's loan is for A\$450,000. (5)
- 3) As part of a comprehensive remuneration package, Eloise has been provided with a newly constructed four bedroom house in a suburban area of Melbourne with effect from 1 April 2014. The market rent is A\$72,000 per year, but Eloise is only required to pay A\$26,000. (5)
- 4) Fatima is employed by a stationery supply company, and her employer pays a A\$180 fee for a four week wellness and yoga program offered by the nearby city gym. (5)
- 5) Guy incurs expenses of A\$3,500 for a self-education course. As the course is work-related, Guy's employer has agreed to repay the full expense. (5)

Total (25)

6. 1) **How are capital gains derived by residents from ownership of foreign assets taxed in Australia?**

**In your answer, you should consider both situations in which a Double Tax Agreement might apply and those in which it does not. You should refer to relevant statute and case law.**

(13)

Continued

6. Continuation

**2) How are capital gains derived by foreign residents from ownership of local (i.e. Australian) assets taxed in Australia?**

**In your answer, you should consider both situations in which a Double Tax Agreement might apply and those in which it does not. You should refer to relevant statute and case law.** (12)

Total (25)

**7. What are the critical requirements for the existence of a “taxable supply” and a “creditable acquisition” under Australia’s Goods and Services Tax (GST) law? Explain, by reference to recent case law in Australia, the complexities which may arise in satisfying the constituent elements of the two definitions. In your answer, you should also explain how the two concepts of taxable supply and creditable acquisition are relevant to the operation of the GST.** (25)