Chartered Institute of Taxation
Excellence in Taxation

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2015

PAPER 3.01 – EU DIRECT TAX OPTION

ADVANCED INTERNATIONAL TAXATION (THEMATIC)

TIME ALLOWED – 3¼ HOURS

- You should answer **FOUR** out of 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 appropriate monetary currency, unless the question requires otherwise.
- Marks are specifically allocated for good presentation.

1. In December 2014 a general anti-avoidance provision (GAAR) was introduced in the Parent/Subsidiary Directive, which is to be implemented by EU member states no later than 31 December 2015.

   You are required to describe the contents of this provision, and explain what the consequences will be for the tax policy of member states and the European business community. (25)

2. A bank based in Alania, an EU member state, is carrying out regular bank activities in Alania. In this respect it also trades in shares of companies resident in Benitia, another EU member state.

   In a specific year, the bank purchases 1% of the shares in a company resident in Benitia for €100,000. A dividend of €2,000 is paid on the purchased shares. The shares are subsequently sold for a price of €99,500. The bank has financed the shares with a loan. During the period in which the shares are held, interest of 1.4% (a total interest liability of €1,400) is paid. Overall, therefore, the bank generates a profit on the transaction of €100:

	€
Purchase of shares	(100,000)
Dividend	2,000
Interest	(1,400)
Sale of shares	99,500
Profit	100

   On the €2,000 dividend, a 15% dividend withholding tax is withheld in Benitia, amounting to €300. The regular corporate income tax rate in Benitia is 25%. The bilateral tax convention based on the OECD Model, concluded between Alania and Benitia, secures an ordinary tax credit in Alania for foreign dividend withholding tax.

   According to the bank, it has suffered discriminatory treatment at the hands of Benetia, because it is required to pay more dividend withholding tax (€300) on the transaction than a local bank in Benitia would have to pay tax on the net profit from the transaction (25% of €100, i.e. €25).

   Can the bank invoke EU law against Benitia on the basis of discriminatory treatment concerning the taxation of the received dividends? If so, then on what grounds can EU law be invoked? (25)

3. Various member states of the European Union have overseas territories. The free movement of capital also relates to third countries.

   You are required to argue whether or not taxpayers established in overseas territories can invoke the Treaty on the Functioning of the European Union (TFEU) by means of the freedom of capital movement in:

   1) An external situation (defined as a situation concerning Member State A versus an overseas territory of Member State B); and (13)

   2) An internal situation (defined as a situation concerning Member State A versus an overseas territory of Member State A). (12)

   Total (25)

4. The European Commission is conducting investigations against various member states, concerning various tax rulings which were closed by the member states with individual companies via their domestic subsidiaries in those member states.

   The investigation is focused on the question of whether such agreements amount to the provision of unlawful state aid by these member states.

   You are required to explain why the European Commission holds that settlements agreed with individual companies may be regarded as unlawful state aid and, on the basis of the European state aid rules, explain under which conditions these tax rulings can be said to constitute state aid. (25)

5. A legislative measure by an EU member state which hampers one of the four 'freedoms' of the EU may be justified, if the measure is appropriately supported by a general interest justification which meets the proportionality test. This test requires demonstration that the measure does not go beyond what is necessary to achieve the objective of the domestic legislative measure, and that the measure is adequate to achieve the stated objective of the legislative measure.

   You are required to explain the requirement that the measure must be 'adequate to achieve the objective of the legislative measure'. What is the meaning and background of this requirement? You should illustrate your answer with a case in which the Court of Justice of the European Union has ruled that a legislative measure was not adequate to reach the objective of the measure at hand, and consequently breached the principle of proportionality. (25)

6. **You are required to describe, with reference to relevant case law, the concept of "abuse of Community law", which was developed by the ECJ in relation to VAT-structures aimed at obtaining deduction of invoiced VAT from government bodies.**
   (25)

7. Mr Jansen lives with his family in Domus, an EU member state. He also owns a holiday home in Vacare, which is also an EU member state. In order to finance the purchase of his holiday home, Mr Jansen obtained a bank loan on which he pays interest of 6% per year.

   Under the income tax law of Domus, residents are allowed to deduct from their taxable income a tax free base of €10,000. In addition, residents are allowed to deduct from their taxable income any interest payments relating to the acquisition of residential properties located in Domus which are used for private purposes, including holiday homes. However, interest payments relating to the acquisition of residential properties outside Domus are not tax-deductible.

   Mr Jansen enquires as to whether this difference in the Domus tax authorities' treatment of interest payment relating to domestic and foreign holiday houses infringes EU law. According to the bilateral tax treaty concluded between Domus and Vacare, Vacare has an exclusive taxing right ('exemption with progression') on income arising from immovable property located in Vacare. For this reason, the Domus tax authorities consider the different treatment of resident and non-resident holiday houses, including the interest deduction in respect of immovable property located in Domus, to be justified.

   You are required to explain, on the basis of the case law of the European Court of Justice, whether Mr Jansen can successfully rely on the TFEU and claim the deduction of the interest payments in Domus. (25)