

# THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

December 2024

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## MODULE 3.01 – EU DIRECT TAX OPTION

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### ADVANCED INTERNATIONAL TAXATION (THEMATIC)

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TIME ALLOWED – 3½ HOURS

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

You need to answer **five** questions in total. You will **not** receive marks for any additional answers.

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 in appropriate monetary currency, unless otherwise stated. Any monetary calculations should be made to the nearest whole unit of currency. Any necessary time apportionments in your calculations should be made to the nearest whole month.
- 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 clarity of presentation of your answers.
- 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 questions in Parts B and C.
- There is no separate reading time, so you can start typing your answers as soon as the exam begins. However, we recommend that you set aside some time to thoroughly read each question and plan each of your answers.

**PART A**

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

1. Ms Jones is a singer, resident in EU Member State A, who performs at concerts in countries across the world.

Ms Jones recently gave a concert in Member State B, and has been taxed on her resulting income by Member State B's tax authority. She argues that, as the income she made from her performance in Member State B fell below the minimum taxable income of Member State B, it should not be taxed at all. She also notes that she has been taxed on her gross income, without being able to deduct any expenses. As performers who reside and perform in Member State B are taxed on their net income, Ms Jones argues that she has been discriminated against.

- 1) You are required to determine the extent to which the rules applied by Member State B are compatible with EU law. (8)**

Ms Jones makes approximately 60% of her income from performing in Member State C, a neighbouring country to Member State A. Her yearly taxable income is spread across different countries and, on average, only 10% of her income can be attributed to her activities in her country of residence. Thus, this year, Ms Jones decided to ask Member State C to take into account her 'negative income' (which comprises alimony payments to her ex-husband) in the calculation of her taxes. Member State C refused on the basis that it only takes into account the negative income of residents when calculating their tax payments.

- 2) You are required to determine the extent to which Member State C's position is compatible with EU law. (8)**

Ms Jones has received an inheritance from her recently deceased grandmother. Her grandmother was resident in Member State D. Member State D has imposed a withholding tax on the inheritance payment, compatible with the double tax agreement between Member States A and D. Ms Jones, however, claims that the imposition of this withholding tax is incompatible with EU law.

- 3) You are required to determine the extent to which the imposition of the withholding tax by Member State D is compatible with EU law. (9)**

**In answering each part of the question, you should explain whether the legislation will be compatible with the EU fundamental freedoms and, if so, under what conditions. Your analysis should include appropriate references to the case law of the Court of Justice of the European Union.**

Total (25)

2. Company X, tax resident in Member State X, is a subsidiary of Company Z, which is tax resident in Member State Z. Company Z has experienced financial difficulties, requiring additional funding. Company X held excess cash that could be made available immediately to its parent. The two companies signed an inter-company loan agreement, under which Company X lent the funds to Company Z for an initial period of five years at a zero interest rate.

Member State X's domestic legislation requires the application of the arm's length principle in cross-border transactions between associated enterprises. For transactions between associated enterprises that are both tax-resident in Member State X, the legislation does not require the application of the arm's length principle.

Based on this legislation, the tax authority of Member State X has made an adjustment to Company X's profits, claiming that the interest rate on the inter-company loan should be at arm's length and that a zero interest rate is not permissible.

Company X argues that the legislation discriminates against companies that belong to EU groups, as they must price intra-group transactions at arm's length whereas domestic groups do not have the same obligation.

**You are required to discuss which freedom applies in the case of Company X, whether Member State X's legislation constitutes discrimination and, if so, whether such discrimination can be justified.**

**Your answer should include reference to the relevant provisions of the Treaty on the Functioning of the European Union, as well as any relevant case law of the Court of Justice of the European Union.**

(25)

## PART B

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

3. Company A is a resident of Member State A, where the prevailing tax rate is 25%. It has implemented the categorical approach under Article 7 of the Anti-Tax Avoidance Directive (ATAD) and wholly owns Company B, which is resident in a non-EU state (State B) where a tax rate of 10% applies.

Company B is a finance company that earns only interest income of €100,000. In year 2, Company B pays a dividend of €90,000 to its parent company.

**You are required to answer the following questions:**

- 1) What are the consequences of these actions, under ATAD Articles 7 and 8? (12)
- 2) If the group falls within the scope of the GloBE Directive (Directive 2022/2523), will the Income Inclusion Rule (IIR) apply alongside the Controlled Foreign Company (CFC) Rule? Outline the relationship between the ATAD and the GloBE Directive, and any sequence to the application of their provisions. (8)

Total (20)

4. Company A, resident in Member State A, is a subsidiary of Company B, resident in Member State B.

Member State A recently introduced a new special tax that is imposed in addition to its regular corporate income tax. According to the new legislation, the tax is imposed on the turnover of corporate taxpayers that are resident in Member State A. In the case of group companies, whether domestic or foreign, the aggregate turnover of the group is taken into account when determining the applicable tax rate. The law provides for a steeply progressive tax scale, under the presumption that the higher the turnover of the group, the greater the ability to pay of the group member that is subject to tax in Member State A.

Company A's management team is concerned that the company will be disproportionately affected by the tax and discriminated against as a subsidiary of a non-resident group whose total turnover will be taken into account, whereas domestic companies are treated more leniently as only their individual turnover is taken into account.

**You are required to prepare a report, assessing the compatibility of the special tax with the EU fundamental freedoms.**

**Your answer should include discussion of which freedom may apply in this situation, and whether the legislation constitutes discrimination against Company A.** (20)

## PART C

You are required to answer TWO questions from this Part.

5. You are required to discuss whether a tax benefit that applies to the entire financial sector of an EU member state falls within the state aid prohibition under Article 107 of the Treaty on the Functioning of the European Union. (15)

6. Member State B has introduced an ‘energy tax’ that applies to all corporations resident in Member State B, regardless of the residence of their owners. Because of the way in which this highly progressive tax on turnover has been constructed, most of the companies affected are foreign owned taxable entities.

You are required to discuss whether this tax is compatible with EU law. (15)

7. You are required to describe the notions of ‘positive integration’ and ‘negative integration’ in the area of direct taxation in the EU.

Your answer should include relevant examples of positive and negative integration, outlining the advantages and disadvantages of each. (15)

8. You are required to briefly describe the powers of the European Commission, regarding state aid. (15)