

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

December 2021

MODULE 1

PRINCIPLES OF INTERNATIONAL TAXATION

TIME ALLOWED – 3½ HOURS

This exam paper has **two** parts: **Part A** and **Part B**.

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

You must answer:

- At least two questions in **Part A** (25 marks each)
- At least one question from **Part B** (25 marks each)

Further instructions

- All workings should be made to the nearest month and you must use the appropriate monetary currency, unless otherwise stated.
- As you are using the online 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 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 a quarter of your time answering each of your four selected questions.
- 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 AT LEAST TWO questions from this Part.

1. You are required to write a report that outlines the main challenges for successful domestic adoption of Pillar Two of the OECD's work on the digital economy, focusing on the prospect of a global minimum corporate tax rate. (25)
2. You are required to write a memorandum that considers the impact of Covid-19 on transfer pricing at a general level and highlights the key issues addressed by the OECD's *Guidance on the Transfer Pricing Implications of the COVID-19 Pandemic* (December 2020). (25)
3. You are required to write a report that outlines some of the key international tax issues for governments to consider, when facing the increased prevalence of crypto-assets. (25)
4. 'The OECD, as a quasi-legislative international body, has emerged as a supranational institution that limits state tax sovereignty by default and by design.'

You are required to critically evaluate this statement.

(25)

5. You are required to evaluate the importance of double taxation conventions for developing countries. Your answer must include an evaluation of the role of comprehensive tax treaty datasets in the tax treaty negotiation or review process, from the perspective of developing countries. (25)

PART B

You are required to answer AT LEAST ONE question from this Part.

6. In the relevant tax year, Rita entered into a contract of employment as a sales manager in Trivia with a salary of \$200,000 per annum. Rita is employed by the Trivian branch of Talia Ltd, a telecommunications multinational which is tax resident in Purcia. For 90 continuous days in the relevant tax year, Rita was seconded to Purcia to train Talia Ltd's directors and attend various business meetings. Rita is a citizen of Purcia, and prior to the relevant tax year lived and worked in Purcia.

In the relevant tax year, the Trivia Revenue Authority (TRA) withheld income tax on Rita's full \$200,000 salary under its Pay As You Earn (PAYE) regime. Rita argues that the portion of her salary that she derived while in Purcia – approximately \$49,000, based on her having been in Purcia for 90 out of 365 days in the year – is foreign source income that is not subject to tax in Trivia as it does not have a Trivian source. Rita spends the remaining 275 days in the relevant tax year in Trivia. Rita completed her Trivian tax return on this basis, including only the remaining \$151,000. The TRA has investigated Rita's return and made an adjustment for her full salary of \$200,000 to be subject to Trivian income tax, rejecting her claim that only \$151,000 should be included in her return.

It has been agreed by both the TRA and Rita that:

- i) Talia Ltd's Trivian branch was Rita's employer and had been registered in Trivia as an 'external company' under Trivia's domestic law (external companies are defined under Trivian domestic law as companies that are incorporated outside Trivia but carry on business activities in Trivia, and are recognised as legal entities for tax purposes); and
- ii) Rita is tax resident in Purcia for the purposes of both Purcian domestic law and the double taxation agreement (DTA) between Purcia and Trivia. Rita satisfied the Purcian residence test as she is classified as ordinarily resident in Purcia under Purcian domestic law, while she did not satisfy the Trivian residence test as she is not a Trivian citizen.

The DTA between Purcia and Trivia includes the following 'Dependent Personal Services' article, which broadly follows Article 15 of the OECD Model 2017:

- 1) *Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions and Annuities) and 19 (Government Service), salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.*
- 2) *Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:*
 - a) *the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;*
 - b) *the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and*
 - c) *the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.*
- 3) *Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment as a member of the complement of a ship or aircraft operated in international traffic may be taxed only in that State.*

You are required to advise Rita on whether she should appeal the TRA's adjustment.

(25)

7. Sorren is a resident of Bistria and a citizen of Allinto. Prior to becoming a tax resident of Bistria, Sorren was tax resident in Allinto. He derives income in both countries, has bank accounts in both Allinto and Bistria, and holds significant additional assets in Allinto. Sorren also has a bank account in Cryptio that generates significant interest income.

The Bistria Revenue Authority (BRA) has issued Sorren with a notice of assessment requiring him to pay all amounts of tax calculated to be due and payable by January 2020. Sorren has challenged the assessment and to date has not paid any of the amounts pertaining to the challenged assessment. Sorren has also recently discovered that the BRA has contacted the revenue authorities of Allinto and Cryptio (the ARA and CRA, respectively) in connection with the tax that it has determined to be payable in Bistria.

Sorren has been advised that:

- i) the domestic law in both Allinto and Cryptio has a statutory limit of 36 months, beyond which a tax debt cannot be enforced or collected;
- ii) Bistria's domestic law has no provision for the freezing or seizure of assets in relation to tax debts; and
- iii) Allinto has double taxation agreements (DTAs) with both Bistria and Cryptio that mirror the OECD Model Tax Convention 2017.

You are required to prepare a memorandum for Sorren, outlining the potential for the ARA and CRA to assist the BRA in the recovery of the Bistria tax to which Sorren has been assessed, under the Allinto/Bistria DTA and the Allinto/Cryptio DTA. (25)