

# **THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION**

June 2023

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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 to the nearest month and in appropriate monetary currency, unless otherwise stated.
- 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. The government of Member State A is considering an amendment to its tax on income from real estate property incurred by its tax residents. According to the proposal, the income will be calculated according to different methods, depending on the availability of information.

Income from immovable property located in Member State A, whether rented or not, is proposed to be determined according to the administrative (cadastral) value of the immovable property, reduced by 40% for maintenance and repair costs.

For income derived from immovable property located in other member states, the government of Member State A proposes making a distinction between immovable property that is rented and immovable property that is not rented. For immovable property that is rented, the actual rental income should be taxable in Member State A. For immovable property that is not rented, it is proposed that a notional income equal to the rental value of the property will be taxable. In both cases the amount (actual or notional) is to be reduced, first by related taxes paid to the state in which the immovable property is situated and second by 40% for maintenance and repair costs.

Before introducing the bill to its parliament, the government has approached you, as a tax expert, for an opinion on the compatibility of the proposed amendment with primary EU law.

**You are required to prepare a report explaining, with reference to the case law of the Court of Justice of the European Union, your assessment of whether the proposed methods for calculating taxable income are compatible with the provisions of the Treaty on the Functioning of the European Union.**

**You should assume that no double taxation agreements are in place between Member State A and the other EU member states.** (25)

2. LOW Corporation (LOW) has recently transferred its place of effective management from Member State A to Member State B, while retaining its registered seat in Member State A. Member State A imposed an exit tax on the company's unrealised capital gains. Payment of the exit tax may be deferred up to five years if LOW provides a bank guarantee to State A as a means to secure repayment.

Upon the change of its tax residence, LOW asked the tax authority of Member State B to deduct the losses it had suffered before it changed its residence. The tax authority of Member State B refused to take these losses into account.

Three years after the transfer of the seat, LOW sold the assets that had triggered the exit tax at a price lower than their fair value at the time of the transfer. LOW asked Member State A to consider this decrease in value when calculating the exit tax amount. Member State A refused to do so. LOW then asked Member State B to consider the subsequent reduction in value, but Member State B also refused.

- 1) **You are required to assess whether the exit taxation regime of Member State A is compatible with EU law.** (5)
- 2) **You are required to assess whether one of the two states is obliged by EU law to consider the subsequent decrease in value and if so, which state.** (10)
- 3) **You are required to assess whether the refusal of Member State B to take LOW's losses into account is compatible with EU law.** (10)

Total (25)

## PART B

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

3. Under DAC6, lawyers and other intermediaries are required to report, to the tax authorities, any cross-border arrangements containing at least one of the characteristics or features enumerated in the Directive that indicate a potential risk of tax avoidance (the ‘hallmarks’).

**You are required to discuss, with reference to case law of the Court of Justice of the European Union, the compatibility of such requirement with the EU Charter of Fundamental Rights. (20)**

4. Member State Z levies a withholding tax on dividend distributions to shareholders in other member states. By contrast, dividends distributed domestically to shareholders resident in Member State Z are exempt from withholding tax.

**You are required to:**

- 1) **Assess whether the levy of this withholding tax is compatible with EU law. (13)**
- 2) **Explain whether it would make any difference if, on the basis of a double tax agreement between Member State Z (the ‘source state’) and the shareholder’s member state (the ‘residence state’), a credit is given by the residence state for the withholding tax levied at source. (7)**

Total (20)

## PART C

You are required to answer TWO questions from this Part.

5. You are required to discuss the concept of the prohibition of abuse of rights, particularly in relation to the Court of Justice of the European Union's 2019 Danish cases (*Joined Cases C 116/16 and C 117/16, Skatteministeriet vs. T Danmark, YDenmark Aps*). (15)
6. You are required to briefly describe the concept of 'foreseeable relevance' as provided in the Directive on Administrative Cooperation, with reference to relevant case law of the Court of Justice of the European Union. (15)
7. You are required to discuss and explain whether the fundamental freedoms, in light of the case law of the Court of Justice of the European Union, are an appropriate tool with which to solve double taxation that may arise in intra-EU situations. (15)
8. You are required to explain whether the Controlled Foreign Corporation (CFC) provisions of the Anti-Tax Avoidance Directive (ATAD) are in line with the case law of the Court of Justice of the European Union. (15)