

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

December 2025

MODULE 3.01 – EU DIRECT TAX OPTION

ADVANCED INTERNATIONAL TAXATION (THEMATIC)

TIME ALLOWED – 3½ HOURS

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

- You must use the appropriate 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. Member State A has requested information from Member State B concerning Taxpayer Z; specifically, Member State B has asked Bank BB, resident in Member State B, to provide details of the taxpayer's bank account, including the names of the bank account holder(s) and the beneficial owner(s) of the account.

Member State A has informed Member State B that it suspects Taxpayer Z is hiding income that she has received in Member State B. Bank BB has provided only part of the information requested.

You are required to answer the following questions:

- 1) Can Member State A request the above information from Member State B and, if so, on what basis? Are there any grounds upon which the Bank can refuse to provide this information to Member State B and, if so, what are they? (10)
- 2) Taxpayer Z has claimed that she was not informed about the information exchange request and did not participate in the procedure, and that therefore the information requested is not valid. To what extent is Taxpayer Z correct? (7)
- 3) To what extent can Taxpayer Z claim that her right to private and family life (Article 7 of the Charter of Fundamental Rights of the EU) and her right to personal data protection (Article 8 of the Charter of Fundamental Rights of the EU) are violated if Bank BB gives the requested information to Member State B? (8)

Total (25)

2. Company T is established in Third Country, a country outside the EU. It has a subsidiary in Member State S, an EU country, from which it received a dividend payment in 2024. Dividend payments are subject to a 20% withholding tax (WHT) in the state of the subsidiary. The 20% WHT rate applies to both domestic and cross-border dividend payments. In the case of Company T, the 20% WHT was reduced to 10% pursuant to the applicable double tax agreement (DTA) between Third Country and Member State S.

Company T had incurred losses in its residence country in 2024 and therefore, since no tax was due in Third Country, it could not recover the tax that had been withheld on the dividend payment in Member State S.

Company T submitted a claim for refund of the WHT in Member State S, but Member State S denied the refund, stating that no refund is provided for non-resident companies.

Company T argued that, since it had recorded losses, the WHT had become final with no possibility of offsetting it, whereas if it were a loss-making company established in Member State S, the WHT would have been fully reimbursed. According to Company T, this situation is discriminatory.

You are required to answer the following questions, based on the facts of the case, and supporting your answer with references to case law of the Court of Justice of the European Union (CJEU) and the Articles of the Treaty on the Functioning of the European Union:

- 1) Which freedom(s) may apply in this case? How will the CJEU assess the applicable freedom(s)? (7)
- 2) How do you assess Company T's claim that it is discriminated against? Is there a restriction or discrimination of the applicable freedom(s)? (7)
- 3) What justification can Member State S submit in order to defend its denial to reimburse the WHT to Company T? (7)
- 4) Does the application of the DTA, and the imposition on Company T of a lower WHT than applied in domestic situations, have any impact? (4)

Total (25)

PART B

You are required to answer ONE question from this Part.

3. The Harbour group is a multinational group with constituent entities in various EU member states and non-EU countries. The ultimate parent entity (UPE), A Co., is resident in Member State A. According to the consolidated financial statements, the group has annual gross revenues exceeding the GloBE Directive's (Directive 2022/2523) benchmark of €750 million. The structure of the group is as follows:

- A Co. holds 100% of B Co. in Member State B, 82% of C Co. in Member State C and 60% of D Co. in Third Country D (a non-EU country).
- B Co. holds 100% of E Co. in Member State E and 50% of F Co. in Third Country F (a non-EU country).
- C Co. has a permanent establishment in Third Country G (a non-EU country).
- D Co. holds 100% of H Co. in Third Country H (a non-EU country).

Of the countries mentioned, the following currently have effective corporate tax rates below 15%:

- Third Country D;
- Member State E;
- Third Country F;
- Third Country G; and
- Third Country H.

You are required to answer the following questions:

- 1) The government of Member State A is assessing whether it can use the current OECD guidelines (which were issued subsequent to the adoption of the Directive), when interpreting the Directive and transposing its provisions into domestic law. (5)
- 2) If all EU member states have implemented the GloBE directive, Third Country D also abides by the OECD Pillar Two Model Rules, and Member State C and Third Country D each apply a qualified domestic minimum top-up tax (QDMTT), which countries will collect top up taxes and to what extent? (10)
- 3) How do the controlled foreign corporation rules, which must apply in all EU member states under the Anti-Tax Avoidance Directive, interact with the GloBE rules? (5)

Total (20)

4. You are required to describe the basic elements and the function of the General Anti-Avoidance Rule (GAAR) that is established in Article 6 of the Anti-Tax Avoidance Directive (Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market).

You should include a discussion on the relationship of the GAAR with other anti-avoidance rules in EU tax law, and references to relevant Court of Justice of the European Union case law. (20)

PART C

You are required to answer TWO questions from this Part.

5. Company Z, an EU-resident company based in Member State Z, has a permanent establishment (PE) in Member State X, a fellow EU member state. The PE has been making losses for the past three years. Company Z intends to utilise these losses at the end of the current fiscal year.

However, the tax authority of Member State Z has refused to take the PE's losses into account. Company Z complains that this is contrary to EU law.

You are required to explain whether Member State Z can refuse to take these losses into account. If so, under what circumstances? (15)

6. **You are required to discuss the conditions under which withholding taxes are compatible with EU law, from a primary EU law and fundamental freedoms perspective.** (15)

7. According to the established case law of the Court of Justice of the European Union, "Although direct taxation is a matter for the member states, they must nevertheless exercise their direct taxation powers consistently with Community law".

You are required to explain the origins of this doctrine, its meaning, and the impact it has had on the evolution of EU direct tax law. (15)

8. **You are required to comment on the legal nature, scope and mechanics of the Arbitration Convention (90/436/EEC: Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises).**

You should include an assessment of the implications of the legal nature of the Arbitration Convention and of its relevance, after the adoption of the EU Tax Dispute Resolution Directive (Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union).

(15)