



THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

May 2004

PAPER III

PRINCIPLES OF CORPORATE AND INTERNATIONAL TAXATION

B - EUROPEAN COMMUNITY OPTION

TIME ALLOWED - 3 HOURS

Candidates should answer any **four** out of seven questions.
Each question will carry equal marks.
Start each answer on a fresh sheet.
Marks are specifically allocated for good presentation.

1. Fantasticvalue plc is a medium sized supermarket chain based in the UK. It sells a range of cheese products in the UK. In that capacity it is liable to pay a 'Cheese Purchase Tax' to the UK Treasury, the amount of tax being dependent upon its level of cheese purchased. Fantasticvalue plc claims that the Cheese Purchase Tax is contrary to Community law and has applied to the UK tax authorities for reimbursement of sums paid by way of that tax.

The 'Cheese Purchase Tax' is used to subsidise small farmers producing cheddar cheese in the UK.

Fantasticvalue plc has asked you for advice on its potential state aids case.

Draft your opinion on Fantasticvalue plc's potential state aids claim. (25)

2. Your client, BestAir plc, is a UK company that operates scheduled and chartered flights all over Europe. It leases aircraft from an Irish company called Brian Boru Ltd. UK tax rules provide more favourable tax treatment if the aircraft are leased from a UK company rather than from an Irish company. BestAir plc believes that this is contrary to Community law and seeks your urgent opinion on this matter.

Write your opinion, focusing on the jurisprudence of the ECJ in the direct tax area as it applies to companies. (25)

3. "The Commission, the European Court of Justice, the Council of Ministers, and the European Parliament all play significant roles in the area of EC tax policy but the Council of Ministers is the most important Community institution in this area."

Do you agree? Discuss this statement and describe the relationships between each of the Community institutions and the significance of the role each plays in the tax sphere if any. (25)

4. "A system of value added tax achieves the highest degree of simplicity and of neutrality when the tax is levied in as general a manner as possible and when its scope covers all stages of production and distribution and the provision of services." (Terra and Wattel)

Discuss the Community's VAT system in the light of the above statement. (25)

5. The USA-UK Double Tax Convention (hereafter, 'DTC') provides for a zero % withholding tax on dividends provided certain conditions are satisfied. As the UK does not have a withholding tax on dividends, the limitations are only applicable to US dividends beneficially owned by, and paid to, UK residents.

The DTC provides that UK resident companies that beneficially own the dividend, and that have owned shares representing 80% or more of the voting power of the US company paying the dividend for a 12-month period ending on the date the dividend is declared will be entitled to the zero rate [Article 10(3)(a) DTC] provided that the UK company either:

- owned those shares, directly or indirectly, before 1 October 1988 and it passes an 'ownership and base erosion test' [Article 23(2)(f) DTC] or an 'active conduct of a trade or business' test [Article 23(4) DTC];
- is a company listed on a recognised stock exchange [Article 23(2)(c)(i)]; or
- is accepted by the US competent authority as being entitled to the benefits of the DTC on the basis that the establishment, acquisition or maintenance of the company and the conduct of its operations did not have as one of its principal purposes the obtaining of treaty benefits. [Article 23(6) DTC].

Your client is Rendezvous (UK). Rendezvous (UK) is a UK branch of a French company. It is denied the benefits of the DTC because it is not a UK company.

Write a detailed Memorandum advising your client on the EC Tax issues arising in the light of the above facts and suggesting any possible solution. Illustrate your answer with any EC-related case law.

(25)

6. Wilkinson Ltd is a UK company and its managing director and main shareholder is Mr Johnson. For a number of years it has traded in the UK and via branches located in a number of EU countries. Mr Johnson is seeking your advice on a number of urgent matters.

Mr Johnson tells you that the tax authorities investigated the tax affairs of Wilkinson Ltd in 2000 (four years ago). The tax investigations revealed that Wilkinson Ltd had been under-declaring profits for a number of years. As a result, his company was assessed with additional taxes, substantial penalties and surcharges. Wilkinson Ltd refused to pay, claiming that the tax authorities had made a mistake. In 2001, the tax authorities confiscated a substantial amount of company assets, but a considerable amount of tax, penalties and surcharges remains outstanding. Mr Johnson advises you that Wilkinson Ltd launched an appeal against the assessment, penalties and surcharges in 2000 but no decision has been rendered to date.

Mr Johnson has recently (2004) been charged with a separate criminal offence of tax fraud and faces a possible custodial sentence of two years imprisonment. He argues that the information obtained by the tax authorities was incorrect and that, as a result of the confiscation of company assets, his company is now in financial difficulties. Criminal penalties are also being considered against Mr Johnson in two other EU countries where Wilkinson Ltd had branches.

Mr Johnson argues that it is unfair that Wilkinson Ltd is punished and that he too is punished for what is virtually the same offence.

Advise Mr Johnson and his company, Wilkinson Ltd, of any rights they might have under the Human Rights Act, 1998 or the European Convention on Human Rights. Where possible illustrate your answer by reference to relevant cases.

(25)

7. Answer part (a) or (b):

- (a) "Home State Taxation is the best way forward for the taxation of companies in the EU as we enter the 21st Century. Although it is only a compromise solution, it is the best one on the table." (Amiss)

Discuss the future of European company taxation in the light of the above statement. (25)

- (b) "The arrival of the European Company (Societas Europaea) is a step towards a comprehensive tax system at the European level." (Steppley)

Discuss the introduction of the European Company and its future role in EC tax matters. (25)