



THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

May 2005

PAPER I

PRINCIPLES OF INTERNATIONAL TAXATION

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. Some commentators have queried whether bilateral double taxation conventions relating to the taxation of income and capital are essential for the resolution of international tax problems.

You are required to indicate whether, in your opinion, such double taxation conventions fulfil a useful purpose or purposes, and to examine the alternative approaches that might be adopted in relation to the problems that these conventions seek to address. (25)

2. "OECD member countries seek to establish standards that encourage an environment in which fair competition can take place. They do so in the tax area through promoting principles that are designed to enable each country to apply its own tax laws without the interference of practices that operate to undermine the fairness and integrity of each country's tax system. A basic element of this work is the pursuit of a level playing field among all countries and jurisdictions."

[The OECD's Project on Harmful Tax Practices: The 2004 Progress Report]

You are required to consider to what extent the OECD has complied with the sentiments expressed in this statement in its endeavour to combat harmful tax competition and harmful tax practices. (25)

3. You are consulted by the Treasury Minister of a newly independent state. He informs you that he wishes to ensure, as far as possible, that the tax base of the state is protected so that adequate tax revenues are available to finance various publicly funded projects. In this regard, he is concerned particularly about what he perceives to be the potential loss of tax revenues arising as a result of cross-border e-commerce transactions.

You are required to advise the Minister on the circumstances in which the state may argue that an enterprise engaged in such e-commerce transactions has thereby established a permanent establishment in that state within the meaning of Article 5 of the OECD Model Tax Convention on Income and on Capital. (25)

4. **You are required to compare and contrast the operation of the various methods i.e. deduction, credit and exemption by which double taxation relief may be granted, and identify the shortcomings, if any, of each approach.** (25)

5. You are consulted by a client company, Zodiac Ltd, which is resident in state A, and which carries on its business in that state. It is contemplating the expansion of its business, and plans to set up subsidiaries in several neighbouring states. It envisages that one of the advantages of this expansion will be the emergence of intra-group trading. However, it is concerned that transfer prices agreed in relation to intra-group transactions may be subject to adjustment by the states in which the members of the group operate.

You are required to advise Zodiac Ltd regarding the following matters:

- 1) The principle upon which such adjustments may be based;**
- 2) The methods that may be used to give effect to that principle; and**
- 3) The opportunities which may be available to contest the tax consequences of any such adjustments.**

[You may assume that double taxation conventions are in force between the respective states that conform to the OECD Model Tax Convention on Income and on Capital.]

6. "Mutual assistance between states with regard to the assessment and/or collection of taxes is dependent upon effective provision for the exchange of information between those states."

You are required to discuss this statement.

(25)

7. "International agreements for the avoidance of double taxation are bilateral treaties and thus belong to the law of nations in the same way as any other political or economic treaty. If the meaning of a treaty provision is not clear then the problem will be solved in the first place by applying the usual rules governing the interpretation of international public law. However, double taxation agreements have a purpose substantially differing from that of normal or economic treaties because they are intended to reconcile two national fiscal legislations and to avoid the simultaneous taxation in both countries."

[IFA Report on the Interpretation of Double Taxation Conventions (1960).]

In the light of the dual nature of double taxation conventions evident in this statement, you are required to consider how courts might proceed in the interpretation of such conventions.

(25)