



# THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

May 2007

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## PAPER I

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### PRINCIPLES OF INTERNATIONAL TAXATION

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TIME ALLOWED – 3 HOURS

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- You should answer any **FOUR** out of seven questions.
- You may answer two questions from Part A and two questions from Part B **OR** three questions from Part A and one question from Part B.
- Each question carries equal marks.
- Start each answer on a new sheet of paper.
- Marks are specifically allocated for presentation.

## PART A

1. “[I]t is clear that no would-be interpreter of a treaty, whatever his doctrinal point of departure, will deliberately ignore any material which can usefully serve as a guide towards establishing the meaning of the text with which he is confronted.”

[Sir Ian Sinclair, *The Vienna Convention on the Law of Treaties*, (2<sup>nd</sup> ed., 1984), p. 117]

**You are required to consider to what extent this statement is applicable to the interpretation of double taxation agreements.** (25)

2. **You are required to explain, using examples, the difference between juridical and economic double taxation, and critically assess the efficacy of pertinent articles of the OECD Model Tax Convention on Income and on Capital in dealing with these types of double taxation.** (25)

3. “It remains to be seen to what extent, if at all, states will incorporate the ‘new’ Article 27 (Assistance in the Collection of Taxes) of the OECD Model Tax Convention on Income and on Capital into double taxation agreements. However, be that as it may, the inclusion of this article in the Model confirms the ever contracting influence of the rule of non-enforcement for foreign tax claims [the Revenue Rule].”

**You are required to discuss this extract.** (25)

4. **You are required to examine the provisions of the OECD Model Agreement on Exchange of Information on Tax Matters (2002), and consider to what extent, in relation to tax havens, this Model represents the only tangible outcome of the OECD’s harmful tax practices project.** (25)

5. “The arm’s length principle has been accepted as the standard for determining transfer prices for many years, and, presently, it is inconceivable that it will be superseded by an alternative based on unitary taxation and formula apportionment.”

**In the light of this statement, you are required to outline the respective merits and demerits of the arm’s length principle and unitary taxation, and indicate whether you agree with the view expressed in the statement.** (25)

## PART B

6. Attractavia is a state in which many companies have been incorporated. Some of these companies have expanded and successfully developed their respective enterprises overseas by setting up foreign subsidiaries. In recent years, the rate of Corporation Tax in Attractavia has risen markedly, and now compares unfavourably with the rate applicable in many other states.

In these circumstances, the Attractavia Revenue Department (ARD) has the following concerns. First, it is fearful that profits generated by the subsidiaries will not be remitted as dividends to the parent company resident in Attractavia and so escape tax there. ARD believes that such dividends will, instead, be declared in favour of and, hence, be redirected to intermediate companies incorporated by the group in other states. Secondly, it anticipates that following receipt of such dividends the intermediate companies may seek, on occasion, to make equivalent loans to the parent companies in Attractavia and that, in turn, the parent companies may claim that the interest payable under the loan agreements is tax deductible. The Attractavia Revenue Code contains a General Anti-Avoidance Rule (GAAR) that purports to deny fiscal efficacy to 'arrangements whose only or main purpose is the avoidance of tax'.

**ARD has asked you to write a Report on how these tax avoidance activities might be countered using either the GAAR or by the introduction of specific anti-avoidance measures which have been used by other countries to counter similar tax avoidance.** (25)

7. Hot Chilli Sauce Ltd (HCS Ltd) was incorporated in Vindaloo where it manufactures and bottles sauces. The sauces are sold, principally, in the Far East. Its Board of Directors is a large and unwieldy body, which meets, infrequently, in Vindaloo. However, day-to-day decisions affecting the business are made by an executive committee which tends to convene in Bhuna where most of its members are resident.

HCS Ltd is contemplating the expansion of its business, particularly in the Middle East. In furtherance of this objective, it is in negotiation with Kool Kondiments Ltd (KK Ltd) which is based in Korma. It has been proposed that KK Ltd might initiate a marketing campaign for HCS Ltd's sauces (funded by HCS Ltd), and that it might keep a stock of the sauces in Korma in readiness for interested customers. It has also been suggested that one of the directors of HCS Ltd, who has relatives living in Korma and with whom he might stay, be seconded to KK Ltd in order to oversee any arrangement made between the companies.

**Advise HCS Ltd with regard to the respective rights, if any, of Vindaloo, Bhuna and Korma to tax its profits, and as to the manner in which any competing rights to tax which exist between these states might be resolved.**

You may assume that double taxation conventions are in force between the respective states and that they conform to the OECD Model Tax Convention on Income and on Capital. (25)