



THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

Specimen Examination Paper

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. "Article 87(1) of the EC Treaty declares any form of State aid to be incompatible with the common market. The second and third paragraphs of that Article define a number of exceptions. In particular, Article 87(2) identifies three types of aid that are always compatible with the common market and hence permitted. Article 87(3) identifies another five types of aid that may be compatible with the common market, provided certain conditions hold and the Commission grants authorisation. It follows that not all measures of public support are measures that constitute State aid in the meaning of Article 87(1)." Phedon NICOLAIDES (2001)

You are required to discuss the concept of State Aid and its application in the field of corporate taxation in the light of the above. (25)

2. UK Co establishes a wholly-owned subsidiary (UK sub) in the UK. The UK sub establishes a wholly-owned subsidiary in France (France Co) and a branch in German (German PE). For the first three years of operation France Co and German PE sustained losses. Eventually the management of UK Co made the decision to close France Co and the German PE. Under UK tax rules the losses of the German PE would be included in the UK taxable profits of the UK sub. Similarly, UK tax rules allow any losses made by UK sub to be surrendered to UK Co. However, UK tax rules do not allow the losses of France Co to be surrendered for use in the UK against the profits of UK sub or UK Co.

The Managing Director of UK Co has consulted you for advice on the EC tax aspects of this problem. You have been asked to prepare a report on the arguments for and against obtaining the loss relief in the UK for the losses incurred by France Co. Your Report should be based on current ECJ case law and any relevant domestic cases you have read. You have also been asked to express your opinion on the likely outcome of any litigation arising, stating your reasons for same.

You are required to prepare the necessary Report and conclude with your Opinion on the likely outcome of any litigation. (25)

3. Your client is a Dutch multinational operating subsidiaries and branches in a variety of EU countries. It has recently employed an American tax specialist who is unfamiliar with the EC Treaty and the relationship between the various Community Institutions. He has come to you for advice.

You are required to write a memorandum dealing with the key provisions of the EC/EU Treaties and briefly outline the roles and responsibilities/competences of the key Community institutions relating to corporate tax matters. (25)

4. "Value Added Tax harmonisation made a significant contribution to the economies of EC Member States. It abolished the 'cascade effect' of turnover taxes; is neutral; simple to operate; and elegant in an internal and cross-border situation."

You are required to describe the development of the EC system of VAT as seen in the "Sixth Directive" as it applies to companies in light of the above statement. (25)

5. A USA company established a wholly owned subsidiary in Ireland. The Irish subsidiary has three wholly owned EC subsidiaries – in France, Spain and Germany. The Spanish subsidiary has a PE ('permanent establishment') in the Netherlands. The Netherlands PE has investments in Thailand (a non-EU country) from which it receives dividend and interest income. Thailand imposes a withholding tax on the dividend and interest income. The Netherlands PE argues that it should receive the benefit of the Thailand–Netherlands double tax treaty that would reduce its withholding taxes in Thailand to zero. Thailand argues that the Netherlands PE is not a “resident of a Contracting State” as per the Thailand-Netherlands tax Treaty and therefore denies the treaty benefits.

The Chief Financial Officer of the USA parent company has approached you for advice on the EC Tax aspects of this problem.

You are required to write a memorandum on the EC tax issues arising, with particular emphasis on any related EC case law and any possible solutions to the problem. (25)

6. John, James and Michael travel to France from the UK on a shopping trip. John is getting married in a few weeks so they decided to obtain all their wine in Calais. Before they set off, they borrowed a van from James' employer Kingwines Ltd, an off-licence (alcohol shop) located in West London. Their families have given them some extra cash to bring back some cigarettes. Neither John, James nor Michael smokes. Upon arrival in Calais, the three fill the van full of wines and cigarettes. When they arrive back in the UK, the van is stopped and searched by British Customs and Excise Officers. John, James and Michael tell the story of the wedding and of bringing back the wines for the forthcoming wedding. When questioned all admit to being non-smokers. James also admits to having made a regular trip to France in the same van for his employer and bringing back some wines for sale in the off-licence business. Customs and Excise express their disbelief in the “wedding” story; confiscate all the wines and cigarettes; and confiscate the van as a penalty. The van is quite new and is valued around £30,000. The total value of the wine confiscated is £4,000 and cigarettes is £2,000.

Needless to say James' employer Kingwines Ltd is not 'amused' and wants its van back. Similarly, John, whose wedding is coming up, also fears he will have no wine for his celebration. They consult you for your advice. In particular, they want to know what rights they might have under any Human Rights legislation. They ask you to investigate whether any similar cases have occurred and seek your opinion on how they might use Human Rights to get their van, wines and cigarettes back from Customs and Excise.

You are required to write a memorandum dealing with the EC tax and ECHR issues, citing where possible any relevant cases. State whether or not you feel Kingwines Ltd will get its van back and whether or not the wines and cigarettes should be returned.

(25)

7. Answer parts 1) **OR** 2) below.

- 1) “The Commission believes that company taxation systems in the EU have failed to keep up with developments such as globalisation, economic integration in the Internal Market and Economic and Monetary Union. A new approach is needed.”

European Commission 2002.

You are required to discuss the future of EC taxation in the light of the above statement.

(25)

- 2) “The indirect tax case law of the ECJ (not VAT) reflects a similar response to the Single Market as demonstrated in the ECJ’s direct tax cases”.

You are required to discuss this statement as it applies in the corporate field using the direct and indirect tax cases of the ECJ to illustrate your answer.

(25)