# THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2013

# PAPER I

## PRINCIPLES OF INTERNATIONAL TAXATION

TIME ALLOWED – 3¼ HOURS

- You should answer **FOUR** out of seven questions including **AT LEAST TWO** from Part **I** and **AT LEAST ONE** from Part **II**.
- Each question carries equal marks.
- Start each answer on a new sheet of paper.
- Marks are specifically allocated for presentation.

## PART I

**You must answer at least TWO questions from this Part.**

1. **You are required to describe the form, history and functioning of double tax treaties to a tax specialist with no knowledge of international tax law. The tax specialist wishes to know in particular how, and to what extent, the problems of international double taxation and tax avoidance are resolved via tax treaties.** (25)

2. "FATCA is the latest in a long line of international measures aimed at clamping down on tax evasion, this time by automatic exchange of information. The United Kingdom and the United States of America signed the first of these [FATCA] agreements last year and the number of agreements with the USA continues to grow. However, I believe that this is just the beginning and that the FATCA model will ultimately be rolled out within Europe and beyond and it is very likely that it will replace the planned second EU Savings Directive."

   (Eddie Teare, Treasury Minister Isle of Man, Budget Speech, 19 February 2013)

   **You are required to discuss this statement in the context of:**

   **1) states' efforts at exchanging information;** (9)

   **2) the likely impact of increased FATCA-style arrangements around the world; and** (8)

   **3) the major differences between FATCA and existing multilateral arrangements between states to exchange information, in particular the EU Savings Directive.** (8)

   Total (25)

3. **Describe the importance of the arm's length principle in international taxation, the difficulties it leads to for multinational taxpayers, and whether you agree with the OECD that it is still the best solution compared to available alternatives.** (25)

4. **Explain the differences between relief from double taxation by credit and exemption. What are the advantages of each method? Why may some countries prefer one method rather than the other?** (25)

5. "Some critics say [the UK General Anti-Abuse Rule] is too narrowly drafted and will not deal with the issue of low corporate tax payments from multinational companies like Starbucks, Google and Amazon. Of course it won't do that – no GAAR could, since a GAAR cannot change the fundamental structure of international tax law."

   (Professor Judith Freedman, December 2012)

   **You are required to discuss this statement with particular reference to:**

   **1) the issues that arise when introducing a GAAR into a country that has a wide treaty network; and** (13)

   **2) the manner in which low corporate tax payments by multinational companies can best be minimised.** (12)

   **Marks will be given for including examples from country practice.**

   Total (25)

## PART II

**You must answer at least ONE question from this Part.**

6. Alpha Ltd is incorporated in Ascovia. 30% of its shares are owned by a family foundation, the Alpha Foundation, resident in Ascovia. The Foundation appoints the chairman of Alpha Ltd's board of management, who is resident in Ascovia.

   35% of the shares in Alpha Ltd are owned by Beta Ltd, a private company resident and incorporated in Baltonia, and the remaining 35% of the shares in Alpha Ltd are the property of the federal government of Baltonia. Beta Ltd and the government of Baltonia each appoint a director to Alpha Ltd's board of management. Both directors are resident in Baltonia. One travels to the quarterly management board meetings that are held at the offices of the Alpha Foundation in Ascovia; the other remains in Baltonia but attends the meetings by live video link.

   Alpha Ltd operates a plutonium mine in Baltonia. Decisions concerning the operation of the mine are made weekly in Baltonia by an executive board consisting of the two directors resident in Baltonia. They occasionally consult the chairman on matters of exceptional importance in between the quarterly meetings of the management board.

   Ascovia treats a company as a resident if it is incorporated there under the laws of Ascovia. Baltonia treats a company as a resident if its central management and control is exercised in Baltonia. Under the law of Baltonia, Alpha Ltd is regarded as resident in Baltonia. The tax treaty between Ascovia and Baltonia is identical to the OECD Model Tax Convention.

   **You are required to advise in which state Alpha Ltd is resident for the purposes of the tax treaty between Ascovia and Baltonia. What difference does Alpha's residence in Ascovia or Baltonia make for the operation of the treaty?** (25)

7. The state of Varania is seeking to enforce a tax claim in the state of Unova. The claim relates to the years 1996-98 in respect of a company, AnnuMac Ltd (AnnuMac), which is incorporated in Unova. AnnuMac's directors and its ultimate beneficial owner, Mr Thompson, are resident in Varania. Varannia has obtained a judgment in a final tax appeal in its courts against AnnuMac for £300 million for the years concerned.

The competent authority of Varania alleges that on hearing the outcome of the tax appeal, Mr Thompson caused the balance of £50 million in the bank account of AnnuMac to be transferred to the bank account in Unova of another company, MTC Ltd, which is structured and owned by him in the same way as AnnuMac.

The relevant Double Tax Convention (DTC) was entered into by Unova and Varania in 2000 and entered into force the following year. The Mutual Assistance Provision in the DTC was amended in 2006 by a Protocol to include in the DTC an 'Assistance in Collection' provision. The Protocol entered into force on 10 July 2007.

Article 30 (Entry into Force) of the Unova/Varania DTC reads as follows:

"Each of the Contracting States shall notify to the other, through the diplomatic channel, the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of receipt of the latter of these notifications and shall thereupon have effect:

- in Unova on 1 January in the year following the date upon which this agreement is entered into; and

- in Varania on 1 January in the year following the date upon which this agreement is entered into."

Article 27 (Assistance in Collection) of the treaty between the two states follows Article 27 OECD Model Tax Convention.

The Protocol incorporating Article 27 of the treaty clarified that the Unova/Varania Double Tax Convention would contain a new article on Assistance in Collection (Article 27).

**You are required to:**

1) **advise Unova as to the likely success of an action brought for recovery of the sums owed to Varania via the Article 27 of the Unova/Varania Double Tax Convention.** (13)

2) **place your answer within the context of a general discussion of assistance in collection initiatives.** (12)