THE CHARTERED INSTITUTE OF TAXATION

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

May 2004

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. **Outline the nature and purposes of double taxation agreements, and examine the issues of interpretation to which they may give rise.**

(25)

2. You are consulted by a client company, Astra Ltd, which is resident in state X. It is fearful that the transfer prices it has agreed with an affiliate, Belle Ltd, which is resident in state Y, may be adjusted by either or both of these states. A double taxation agreement is in force between states X and Y in a form that follows the OECD Model Tax Convention on Income and on Capital.

   Astra Ltd seeks your advice regarding the following matters:

   1) What will guide states X and Y in determining the anticipated adjustment(s) to the transfer prices agreed between Astra Ltd and Belle Ltd?;

   2) What steps can be taken by Astra Ltd if the adjustment(s) result in double taxation?; and

   3) Whether it would be advisable for Astra Ltd and other companies in its group to seek, in future, to enter into advance pricing agreements where such facility is available.

(25)

3. 'The rule of non-enforcement for foreign tax claims is well established. However, its authority has been diminished by the emergence of a number of exceptions to it.'

   Discuss.

(25)

4. "…the fact that tax competition may lead to the proliferation of harmful tax practices and the adverse consequences that result…shows that governments must take measures, including intensifying their international co-operation, to protect their tax bases and to avoid the world-wide reduction in welfare caused by tax-induced distortions in capital and financial flows."

   [OECD, *Harmful Tax Competition – An Emerging Global Issue,* (1998)]

   In the light of this statement, critically examine the OECD initiative in relation to harmful tax competition and harmful tax practices, and state, in your opinion, what it has achieved.

(25)

5. Recently, Tubigistan was granted independence, and its government has decided that the development of the country is best served by a market economy. Consequently, it is keen to attract foreign direct investment, but equally determined to maximise the corporate tax revenue raised from taxing multinational enterprises that carry on business in Tubigistan. To this latter end, the government of Tubigistan wants to ensure that it has a proper understanding of the words 'permanent establishment' as used in Article 5 of the OECD Model Tax Convention on Income and on Capital.

The government seeks your advice on the following matters:

1) What are the pre-requisites for establishing that an enterprise has a sufficient physical presence in Tubigistan to constitute a permanent establishment?;

2) Where it is sought to establish a permanent establishment by agency

(a) What is the difference between a dependent and independent agent?; and

(b) What requirements would a dependent agent have to fulfil?;

3) On what basis are business profits attributable to a permanent establishment?; and

4) How would the position differ if an enterprise chose to carry on business in Tubigistan through a subsidiary rather than a permanent establishment?

(25)

6. "In recent years, the anti-treaty shopping movement appears to be gaining some ground as additional countries have come to view treaty shopping as a major threat to their domestic tax base."

[Brian J. Arnold and Michael J. McIntyre, *International Tax Primer*, (2nd ed., 2002)]

Discuss this statement, with particular reference to the essential characteristics of treaty shopping, and the types of measures normally employed by states to combat it.

(25)

7. **Give an account of the nature, purpose and effect of controlled foreign corporation rules. To what extent, in your opinion, are these rules compatible with the principles of international tax law?**

(25)