



## Certified Tax Adviser (CTA) Qualifying Examination

### Paper 3 – International Tax

#### Objective of the Paper

The objectives of this paper are to develop candidates' understanding of the basic principles of international taxation and in particular:

- the differences between international and economic double taxation and why international double taxation typically arises
- the means by which international double taxation may be avoided and the difference between unilateral and bilateral double taxation relief
- the nature of double taxation agreements and the operation of typical clauses of such agreements
- common anti-avoidance provisions in taxation legislation designed to counter particular types of international tax planning
- other significant issues in international taxation

After successfully completing this examination, candidates should be able to:

- demonstrate a thorough understanding of why international double taxation typically occurs and how it is avoided
- identify common types of anti-avoidance provisions designed to counter specified forms of international tax planning
- explain the effect of the principal articles in a typical double taxation agreement.

*(Note: This paper is concerned with ensuring candidates to have a sound understanding of the principles governing the above topics and candidates are not expected to have a detailed understanding of the legislative provisions of any jurisdiction other than Hong Kong. Candidates will, however, be expected to have a sound understanding of the terms of the OECD Model Tax Convention on Income and on Capital.)*

#### New Legislation

The Institute will not set questions requiring detailed knowledge of new legislation until **at least six calendar months** after the last day of the month on which the legislation is gazetted upon approval by the Legislative Council. However, candidates taking the examination should be prepared to answer questions requiring knowledge of the principal aspects of that legislation at examinations held within that six-month period. Similarly, the Institute will not set questions about changes being considered to the OECD Model Tax Convention on Income and on Capital or in respect of any changes made less than 6 months prior to the date of the examination.

#### Structure of the Paper

The paper is a three-hour examination to be based on material contained in the prescribed texts. Questions will not, however, be set on proposed changes, or actual changes made in the previous six months, to the OECD Model Tax Convention on Income and on Capital. The paper will examine candidates' understanding of the relevant principles of the identified subject matter and, as such, will not test knowledge of any specific legislative provisions of a jurisdiction other than Hong Kong. As

an example, candidates are expected to have a general understanding of the principles of typical controlled foreign corporation (CFC) rules, but will not be tested on the specific CFC provisions of a particular jurisdiction (other than Hong Kong if it has enacted such provisions).

### **Format of the Paper**

The examination paper consists of six questions, of which candidates are required to answer any four. Each answered question will carry equal marks.

Candidates are permitted to take into the examination an unmarked copy of the *Model Tax Convention on Income and on Capital (condensed version)* as published by the OECD, as well as unmarked copies of any comprehensive double taxation agreements entered into by Hong Kong.

### **Syllabus for the Paper**

The syllabus covers five main areas, being:

- General principles governing the right of a jurisdiction to tax and how such rights are commonly exercised
- The nature of international double taxation, why it occurs and how it is relieved
- Double Taxation Agreements – objectives and operation
- Anti-avoidance provisions in relation to cross-border transactions or planning
- Other issues – hybrid entities and electronic commerce.

Particular areas of study for each of the above areas of the syllabus are set out below.

#### ***General principles of international taxation***

- right of a jurisdiction to impose tax
- residence based taxation
- alternative methods for determining residence status of individuals and corporations
- source based taxation
- typical rules for determining source of income
- common methods for taxing different types of income

#### ***International double taxation***

- difference between economic and international double taxation
- why international double taxation occurs (i.e. the various types of conflicts between the rules of different jurisdictions)
- methods of double taxation relief, including the deduction, exemption and credit methods
- typical simple computations under the different methods of double taxation relief
- general issues surrounding the computations under the various methods of double taxation relief, including (but not necessarily limited to):
  - computation of foreign source income and attributable foreign tax allocation of expenses
  - limitation of credits and various means of calculating such limitations and the relevance of “mixer companies”
  - creditable taxes
  - exemption with progression
  - carry forward/back of excess credits
- relief for underlying taxes under the credit method
- the difference between unilateral and bilateral double taxation relief and the interaction between the two methods
- tax sparing

## ***Double Taxation Agreements***

- legal nature and effect
- objectives
- model DTAs and the main differences between the OECD and UN approaches
- revision and termination
- interaction with domestic taxation law
- interpretation and, in particular, the various sources of definitions (Vienna Convention, DTA, Commentaries, domestic law, etc.) and the interaction between them
- principal Articles of the OECD Model DTA, including:
  - coverage and scope
  - business profits and permanent establishments
  - employment and personal services income
  - immovable property
  - withholding taxes
  - other income
  - non-discrimination
  - resolution of disputes
  - exchange of information and administrative assistance(For each of these Articles, candidates are expected to have a sound understanding of the text of the Article as explained by the Commentaries)
- the concept of “treaty shopping” and methods by which it may be countered by a taxing jurisdiction
- the specific contents of the comprehensive DTAs entered into by Hong Kong

## ***Anti-avoidance provisions in relation to cross-border transactions or planning***

- transfer pricing provisions, including:
  - objectives
  - a general understanding of the more common means of determining arm’s-length prices
  - role of OECD guidelines
  - interaction between domestic transfer pricing provisions and a DTA
  - advance pricing agreements
  - cost contribution agreements
  - determination of income of a branch or permanent establishment
- thin capitalisation provisions
  - issue being addressed by these provision (i.e. the typical difference in tax treatment between debt and equity funding and why these provisions are considered necessary or appropriate)
  - major features and elements of the provisions and the differences in approach between jurisdictions, including:
    - issues with measuring debt and equity under the provisions
    - types of debt covered by the provisions (e.g. all, related party, back- to-back, etc.)
    - different methods for determining acceptable levels of debt financing
    - consequences of disallowed interest expenses
- controlled foreign company provisions
  - issue being addressed by the provisions (i.e. why the provisions are considered necessary or appropriate)
  - defining “control”
  - ascertaining the jurisdictions covered by the provisions
  - ascertaining attributable income
  - typical exemptions and rationale for such exemptions
  - to which taxpayers do the provisions apply?
  - methods of providing double taxation relief
  - application of similar provisions to foreign investment companies, mutual funds and unit trusts

## ***Other Issues***

- hybrid entities
  - nature of hybrid entities and factors giving rise to them
  - why these offer interesting tax planning opportunities
- electronic commerce
  - why this is a significant tax issue
  - OECD approach
- Base Erosion and Profit Shifting

## **Reference Books**

1. **Principles of International Taxation (latest edition)**  
Author: Angharad Miller, Lynne Oats  
Publisher: Bloomsbury Professional
2. **International Tax Primer (latest edition)**  
Author: Brian J. Arnold  
Publisher: Kluwer Law International
3. **Model Tax Convention on Income and on Capital (condensed version)**  
Publisher: Organisation for Economic Co-operation and Development

## **Other Materials**

Double taxation agreements entered into by Hong Kong. These can be accessed through the Hong Kong Inland Revenue Department website: [www.ird.gov.hk](http://www.ird.gov.hk).

## **Supplementary Reading**

1. **International Taxation (latest edition)**  
Author: Joseph Isenbergh  
Publisher: Foundation Press  
(This text is a useful reference for candidates who wish to study the course topics in more depth and with a focus on the specific application of the general principles in the context of the United States. Nonetheless, this additional depth and US focus will not be examined in the Paper.)
2. **Klaus Vogel on Double Taxation Conventions (latest edition)**  
Editor: Ekkehart Reimer, Alexander Rust  
Publisher: Kluwer Law International
3. **Fundamentals of International Tax Planning**  
Author: Raffaele Russo  
Publisher: International Bureau of Fiscal Documentation
4. **International Taxation: Law and Practice in Hong Kong and China**  
Author: Julien Chaisse; Michael Lang  
Publisher: CCH