

# International Tax Treaties

MAXIMUM TIME: 2 HOURS  
MAXIMUM POINTS: 100  
MAY 7, 2009, 9:30 A.M., ROOM 2261

## Instructions

1. Write your examination number, the name of this course (Int'l Tax Treaties), and the name of the instructor (McIntyre) in the appropriate spaces on your **bluebook** or the equivalent for laptop exams. Please do this now. Do **not** put your own name or any information on your personal status (i.e., graduating senior, graduate student) anywhere on the answer sheets. If your examination number is not in the upper right corner of this page, please put it there.
2. *Thank you for putting your exam number and other information in the appropriate spaces.* This is an **open book** examination. You are expected to have with you the course materials for each class, including a copy of the OECD Model Treaty (2009) and the U.N. Model Treaty (2008). You are permitted to have any books, notes, commercial outlines, or other materials you have used during the course. You may use a pocket (non-programmable) calculator.
3. This examination has three (3) parts. Part I has two (2) essay questions, Part II has six (6) Multiple Choice questions, and Part III has twenty (20) True/False questions. The answers to the essay questions go in your bluebook (or laptop). The answers to the Multiple Choice and True/False questions should be marked directly on your copy of the examination.

## NOTE TO PROCTOR:

All copies of the Examination **MUST** be returned to you by the end of the examination period. Please check carefully to be sure you can account for all copies. Persons allowed to leave the examination room **for any reason** must leave their copy of the examination with you to hold until they return.

## Exam

*Instructions.* Answer the following two (2) questions in your bluebook. Write in ink on every other line (double spaced), do not write on the back side of any page, and **do not write in the margins**. Observe the maximum space limitations. *You will suffer a grade penalty, proportionate to the offense, for exceeding the space limitations.* (As a practical matter, a penalty is not imposed for exceeding the limits by two lines or less.) One page of a bluebook, double spaced, is 14 lines.

*Note on Handwriting:* A person with normal-sized handwriting typically gets about 10 to 12 words per line. Make an appropriate adjustment if your handwriting is unusually large or small. Please, do not count your words.

**Note to typists:** Put your exam number in the upper right hand corner of each page of your answer sheets. Number your answers clearly and observe the space limits. One handwritten line of normal size writing is equivalent to 1 line of a typed page (8½" × 11") with 1½ inch margins (pica) or 2 inch margins (elite). This notice is typed with a pica font (Courier 12 point) and has 1½ inch margins.

A.

(Maximum Points: 18; Maximum Lines: 28)

Thomas is an architect and a U.S. citizen and resident. He works as an employee of PCo, a corporation organized under the laws of the United States. Under Article V(1-8) of the U.S.-Canada tax treaty, PCo does not have a PE in Canada. Its only contact with Canada is through the activities of Thomas, as described below.

In year 1, PCo gets a contract from the Ontario government to design a new hockey rink for the Toronto Maple Leafs, a professional hockey team. Thomas signs a contract with PCo to draft preliminary plans for the hockey rink in year 1. Beginning on the first of July, Thomas spends five (5) months in Toronto working on the preliminary plans for the new hockey rink, taking notes and measurements, and the like. He works out of an office made available to him by the Ontario government. He then returns to the United States, where he continues to develop the plans for the hockey rink, using PCo's advanced drafting programs. At the start of year 2, Thomas signs another contract with PCo to make final drawings for the hockey rink. In February of year 2, he returns to Ontario for two (2) months, this time working out of a trailer located on the site of the proposed hockey rink. After that last visit to Canada, he returns to the United States and remains there for the rest of the project.

Thomas received a salary of \$10,000 per month from PCo. PCo earned a profit of \$500,000 for the design of the new hockey rink. Under the tax laws of Canada, Thomas is taxable on \$70,000, representing the salary received for services performed in Canada. PCo is taxable on the entire profit of \$500,000. PCo also earned \$2 million from its unrelated U.S. activities.

**Note:** For purposes of this question, assume that the U.S.-Canada treaty is based on the OECD Model Convention, with the exception of Article V(9) of the U.S.-Canada treaty (p. 133 of materials). Make any reasonable assumptions about the facts if you believe additional facts are needed to complete your answer.

**Question 1(a).** (9 points, 14 lines)

Can Thomas avoid being taxed by Canada on some or all of the \$70,000 under the U.S.-Canada Income Tax Convention (2008)? Would the result be any different under a treaty based on the UN Model convention? Explain.

**Question 1(b).** (9 points, 14 lines)

Can PCo avoid being taxable in Canada under the U.S.-Canada Income Tax Convention (2008)? Would the result be any different under a treaty based on the UN Model convention? Explain.

**B.**

**(Maximum points: 18; maximum lines: 28)**

**Question 2.** (18 points, 28 lines)

The following is an excerpt from the U.S.-Bahamas Exchange of Information Agreement (2002). How effective do you think this agreement is likely to be in curtailing evasion of U.S. taxes accomplished with the assistance of banks or other financial-services companies located in the Bahamas? Discuss.

**Article 2 (U.S.-Bahamas TIEA, 2002)**  
**Provision of Information With Respect to United States Taxes**

1. The Competent Authority of the United States shall only make a request for information pursuant to this Article when the Competent Authority of the United States is unable to obtain the requested information by other means, having made all reasonable efforts to do so.

2. Upon receipt of a request made in conformity with the provisions of this Article, the Competent Authority of The Bahamas shall, subject to the provisions of paragraph 7 of this Article, make all reasonable efforts to provide to the Competent Authority of the United States information with respect to United States federal taxes.

3. Any request for information made by the Competent Authority of the United States pursuant to this Article shall be made in connection with a pending matter of a United States taxpayer and shall be framed with the greatest degree of specificity possible. In all cases, such request shall specify in writing the following:

- a) the legal name of the person about whom the request is made;
- b) the type of information requested;
- c) the period of time with respect to which the information is requested;
- d) the likely location of the information;
- e) the matter under United States federal tax law with respect to which the information is sought and whether that matter is criminal or civil in nature; and
- f) the reasons for believing that the information requested is foreseeably relevant or material to United States federal tax administration and enforcement with respect to the person identified in subparagraph a) of this paragraph.

4. This Article shall not apply to the extent that the requested information:

- a) relates to a matter under United States federal tax law that is barred by the applicable statute of limitations; or
- b) constitutes or would reveal a privileged communication.

5. Where the Competent Authority of the United States requests information with respect to a matter which (i) relates to a person not resident in the United States or (ii) does not constitute a criminal matter, a senior official designated by the Secretary of the Treasury of the United States shall certify that such request is foreseeably relevant or material to the determination of the federal tax liability of a taxpayer of the United States or the criminal liability of a person under the federal tax laws of the United States. If information is requested relating to persons not resident in the United States, it shall also be established to the satisfaction of the Competent Authority of The Bahamas that such information is foreseeably relevant or material to the administration and enforcement of the federal tax laws of the United States.

6. If specifically requested by the Competent Authority of the United States, the Competent Authority of The Bahamas shall provide information pursuant to this Article in specified forms to be admissible in judicial or administrative proceedings in the United States to the same extent that such specified forms can be obtained under the laws and administrative practices of The Bahamas. The specified forms shall include depositions of witnesses and authenticated copies of original documents, including books, papers, statements, records, accounts, and writings.

7. Nothing in this Agreement shall be construed so as to impose on the Government of The Bahamas the obligation to:

- a) carry out administrative measures at variance with the laws and administrative practices of The Bahamas;
- b) supply particular items of information which are not obtainable under the laws or in the normal course of the administration of The Bahamas;

c) supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process; or

d) supply information the disclosure of which would, in the judgment of the Government of The Bahamas, be contrary to national security or public policy in The Bahamas.

8. Notwithstanding paragraph 7, the Competent Authority of The Bahamas shall have the authority to obtain and provide information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity or information respecting ownership interests in a person.

9. In connection with a request for information under this Article:

a) a claim of privilege under the laws of the United States shall be determined exclusively by the courts of the United States; and

b) a claim of privilege under the laws of The Bahamas shall be determined exclusively by the courts of The Bahamas.

## II. Multiple Choice Questions (maximum points: 24)

Mark your choice of alternative answers to each question by circling its identifying letter **on your copy of the exam**. Do **NOT** circle more than one alternative answer per question. Your score will be based on the number of correct answers. No points are deducted for incorrect answers. Each question is worth 4 points.

If you believe that unstated facts are crucial to your answer, or if you believe that a question is ambiguous, go ahead and answer the question as best you can. Then circle the number of the question on the question sheet and, on the space provided on the last page of this exam, identify the unstated facts or the ambiguities and explain their relevance to the question. If your grounds for challenging a question are well-founded and if you have properly shown the relevance of an alleged omission of fact or ambiguity to the answer, you will receive full credit for your answer. There are no intentional ambiguities or omissions of necessary facts.

*Warning: If you decide to explain your answer, you do so at your own risk. You will receive **no credit** for circling what I have judged to be the correct answer to a question if you have challenged that question and your grounds for doing so are unfounded or incorrectly stated.*

[Multiple Choice Questions Omitted]

## III. True/False Questions (maximum points: 40)

Mark your choice of alternative answers to each question by circling its identifying letter on your copy of the exam. Each right answer is worth 2 points. There is no penalty for wrong answers.

[True-False Questions Omitted]