Exam „European Tax Law“
16 December 2009

Question 1 (5 Points)

True or False? Explain your answer in a sentence or two that support your conclusions.

1. A Member State always has to grant a non-resident taxpayer those income-related benefits that it grants to resident taxpayers. This is equally true for the deduction of business expenses as well as for the application of the progressive rate including the “zero bracket”.
2. Member States can justify discriminations by arguing the difficulty of obtaining taxpayer-related information from another Member State.
3. A Member State can always justify a discriminatory domestic measure if such measure is permitted or tolerated by a directive.
4. Austria is under no obligation under the Parent-Subsidiary-Directive to exempt dividends from withholding taxation if the distributed profits have accrued before 1 January 1995.
5. The fundamental freedoms put an obligation on the residence State of the taxpayer to give a credit for foreign withholding tax (e.g., on interest), since otherwise double taxation would occur.

Question 2 (6 Points)

Taxpayer A is a national and resident of Member State X. She is a professional musician and gives concerts also in other Member States. In 2009, she earns half of her income in her residence State X and the other half in Member State Y. In State Y the revenues of Euro 10.000 were subject to an immediate withholding taxation at a rate of 20%. Expenses relating to her activity in State Y in the amount of Euro 5.000 could not be deducted.

Taxpayer A feels discriminated, as residents of State Y would only be taxable (a) with their net income (after deduction of business expenses), (b) could claim a Euro 1.000 deduction for sole earners, (c) would only be taxed at a flat rate of 20%, including a “zero bracket” of Euro 5.000, and (d) would have to pay their tax much later during the course of ordinary assessment. Is this difference in treatment a prohibited discrimination?

Question 3 (4 Points)

Company A is a resident of Member State A and, for several years, is the whole owner of a subsidiary in Member State B. The shareholding is held via a permanent establishment in Member State C. On 1 January 2009 the subsidiary distributes a dividend of Euro 1.000.000.

Which obligations does the Parent-Subsidiary-Directive put on the three Member States involved? Would your answer be different if company A was a resident of Russia for purposes of the tax treaty between Member State A and Russia?

Alternative: Member State C levies a 10% tax on the repatriation of profits of the permanent establishment to the parent company (“branch profits tax”).

Is such taxation permissible under the Parent-Subsidiary-Directive? If so, might the fundamental freedoms prohibit such taxation?