Exam „European Tax Law“
21 January 2011

(45 points = 45 minutes)

<u>Question 1 (15 Points)</u>

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

1. Following the fundamental freedoms, Member States of the European Union must not levy a withholding tax on dividends paid to foreign shareholders.
2. A Member State of the European Union may deny the deduction of losses of a resident company generated in a foreign branch from its domestic profits based on the principle of territoriality; that means, because the losses arise outside the territory of the residence state, the taxpayer has no right under the EU treaty to claim any relief.
3. The freedom of establishment prohibits levying a wealth tax on real estate owned by non-residents, if no such tax is levied on real estate by the state of residence of those persons. If their residence state would, on the other hand, impose such a tax and give a credit for the wealth tax collected in the other state, the discrimination would be justified.
4. The parent subsidiary directive ensures that profits of a company are taxed in one Member state only. It thus runs counter the balanced allocation of taxing power agreed by the double tax conventions between the Member States.
5. A third country national, resident in a EU Member State (A), cannot invoke the freedom of capital movement in proceedings against another EU Member State (B), which levies a withholding tax on dividends paid to him that is higher than the withholding tax paid to a resident of another Member State (C). The situation would be different if the taxpayer was a national of Member State A.

<u>Question 2 (12 Points)</u>

Member State A taxes residents in principle on their world-wide income and non-residents only on income derived from their territory (territorial taxation). However, with regard to personal and family related benefits (e.g. child care deductions, family splitting, personal allowance), it operates a slightly different system: It grants those benefits to all taxpayers in the proportion of their taxable income in A to their world-wide income, so that residents with foreign income which is exempt under a double tax treaty, only receive a part of the "full" benefit. Non-residents also receive a part of the "full benefit", if a part of their income is taxable in A.

Ms T is a Taxpayer resident in A, who earns 50% of her income in Member State A and 50% in Member State B. She claims 100% of the personal benefits available under the law of each Member State, arguing that EU law requires both A and B to grant her deductions of the full amount. B is not willing to grant any relief.

Will T succeed in her claim? Which Member State is responsible to grant personal benefits? What arguments will A and B bring forward to justify their denial of deductions?

<u>Question 3 (8 Points)</u>

A Spanish company A-Co (in the legal form of a "sociedad anónima") holds 15% of the capital of Belgian B-Co (in the legal form of a "naamloze vennootschap") since 1 January 2006. Due to losses in the 2006 and 2007, B-Co pays its first dividend to A-Co on 1 February 2008.

Which obligations does the Parent-Subsidiary-Directive put on the Member States involved concerning the dividend payment at issue? Is there an obligation to give (any) relief right away?

Spain gives relief for the dividend paid to A-Co in the following way: it includes the dividend in the tax base of A-Co; then, the dividend is deducted from the tax base in so far as the tax base after adding the dividend is a amount greater than zero. Because of A's operative losses, only half of the dividend received is deductible from its tax base.

Is this way of "exemption" by way of deduction from the tax base of the foreign dividend in line with the obligations put on Belgium by the Parent Subsidiary Directive?

Question 4 (10 Points)

The UK limited liability company A-Co (incorporated under UK law) is merged with the German B-Co (in the legal form of a "Kommanditgesellschaft auf Aktien"); the shareholders of A receive shares in B-Co as consideration for the merger. Following the reorganization, all former assets, which carry substantial hidden reserves, of the dissolved A-Co are transferred to the German branch of B-Co and used to carry on its business there. No assets remain in the UK.

Is the UK allowed to levy a tax on the capital gains inherent in the assets transferred to Germany in the merger? (focus on secondary EU law – additional bonus-points may be rewarded for also taking fundamental freedoms into account)

How is the situation different regarding assets connected with the Dutch branch of A-Co, which remain in the Netherlands after the merger? (Note that the DTC between the UK and the Netherlands provides for the application of the credit method with regard to income attributable to a permanent establishment in either state.)

Good luck!