



MALTA
INSTITUTE
OF TAXATION

Examiners' Feedback Report – COT Module D 2025 - 2026

- The students were assessed on their awareness and understanding of the application of EU direct tax Directives, decisions and initiatives covered in the Module D materials and lectures. The case study provided touched upon several points including the below:
 - Interest and Royalties Directive
 - Merger Tax Directive
 - Parent-Subsidiary Directive
 - Anti-Tax Avoidance Directive (including Controlled foreign company rules, Exit taxation, Interest deduction limitation rules, Anti-hybrid rules and the GAAR)
 - Beneficial ownership considerations, special anti-abuse rules and CJEU case law
 - Directive on Administrative Cooperation in taxation (including Mandatory Disclosure, exchange of rulings and country-by-country reporting)
 - APAs, State aid and Exchange of rulings
 - Global Minimum Tax Directive.
- Generally, the students showed awareness of the matters to be raised in their role as an external tax advisor to a group of companies that is considering a re-organisation, guided by the plan proposed in the assignment question. Most students correctly identified several of the above points in the context of the intra-group licensing, the transfer of the EU IP PE and IP, the contemplated partial division into the new EU Operations company, the intra-group financing structure and the expected dividend flows. However, further depth was expected in a number of replies, particularly in (i) applying the scoping and applicability criteria of the relevant Directives to the specific entities and transactions described, and (ii) clearly distinguishing between EU and non-EU elements. A number of replies merely gave an overview of general principles and lacked constructive and accurate application to the facts. A precise and concise application is expected in an assignment reply of around 3000 words, particularly where detailed guidance was provided through the plan and the student had the course materials, the law and several supporting resources at hand.
- Most students correctly distinguished between EU and non-EU scenarios, and generally applied the direct tax Directives appropriately. A number applied the earlier Directives to non-EU scenarios and the PE State was not often covered appropriately, despite repetition and visual tests during the lectures. For example, while several students correctly identified that the royalty flows between the non-EU IP company (through its EU PE) and the EU Trading company, many failed to disengage the Interest and Royalties Directive. In some cases, the focus remained on generic statements regarding withholding tax without sufficiently exploring the Directive's conditions, such as the association threshold, beneficial ownership considerations, and the treatment of PEs.
- The relationship between the Merger Tax Directive and other rules, in particular exit taxation, was often unclear. In a number of assignments, the potential application of exit taxation provisions in the context of the reorganisation was either omitted or addressed only in very general and confused

terms. The interaction between the relief and roll-over mechanisms under the Merger Tax Directive and the ATAD exit taxation rules should have been analysed more concretely and accurately, taking into account the factual pattern, the relevant scoping conditions, and the ensuing consequences.

- With respect to the Parent-Subsidiary Directive, most students noted that the expected dividends from EU subsidiaries to the EU Holding company would generally fall within the Directive's scope, and many correctly discussed the conditions for exemption and anti-abuse provisions. However, a number of assignments remained high-level and did not adequately expound upon the two relief mechanisms enabling economic and juridical double tax relief, stopping at withholding tax relief.
- A good number of students mentioned the different anti-abuse rules in the Anti-Tax Avoidance Directive. Those who performed better properly distinguished between the different ATAD components (interest limitation rules, CFC rules, exit taxation and GAAR) in their appropriate context, considering their relevance to each stage of the fact pattern. Several assignments would have been strengthened by a clearer and more structured application of these rules. Assignments would have been more successful had time been taken to sit with the slide deck and the law, and concisely apply the building blocks of the relevant provisions in a structured manner. Marks were given for the correct application of the anti-hybrid rules, although few attempted application (again anti-hybrid rules were identified but not concretely applied by most).
- The GloBE Directive concepts were identified by many students, particularly in light of the indication that the group exceeds the consolidated revenue thresholds and that the EU Holding company is located in a jurisdiction which has deferred the income inclusion rule. The stronger assignments recognised the implications of this deferral, and considered not only the potential operation of the Undertaxed Profits Rule but also the limitation imposed by Qualified Domestic Minimum Top-up Taxes. Weaker assignments tended either to merely restate general Pillar II concepts or to provide broad commentary on minimum taxation.
- Many students referred, albeit in differing degrees, to the reporting frameworks under the Directive on Administrative Cooperation. Marks were attributed where students correctly identified potential Mandatory Disclosure (DAC6) implications arising from the contemplated restructuring and intra-group arrangements, and where they considered exchange of rulings and country-by-country reporting obligations, including the possible impact of public CBC reporting. Others would have improved their result by more clearly distinguishing between the various DAC limbs and by specifically applying the criteria for reporting. It is important not only to list these transparency frameworks but also to link them to concrete features in the scenario (e.g. cross-border intra-group arrangements, hybrid or low-tax structures, or ruling requests).
- Beneficial ownership and anti-tax abuse considerations were generally recognised as important themes, particularly in the context of the royalty and interest flows, the EU Holding company's position and the group's use of low-tax entities. The majority of students appropriately acknowledged the role of anti-abuse clauses in the relevant Directives and the relevance of economic reality. Generally, more depth was expected on topics such as state aid and the GAAR in ATAD. On state aid, analyses were often limited to one or two high-level sentences and did not explore the core elements of state aid or how they may be triggered in a ruling context. On anti-abuse, many students referred, albeit in differing degrees, to case-law mentioned in class and provided in the materials, and marks were attributed accordingly. Generally, students could have improved their result by investing time in the relevance of the identified CJEU decisions in applying the Directives.

- In assignments with a strict wordcount, it is important to focus on the ask, and to apply oneself concisely and effectively, rather than being verbose and repetitive. Assignments of general application, without relevant and purposeful application of the law to the facts and circumstances set out in the question together with appropriate assumptions, were penalised. An assignment grants a student the opportunity to apply the education obtained in class and through the provided materials, at home, with all identified resources at hand. The word count should be used to identify and develop only those technical matters that are relevant to the facts presented and to the objectives of the question. The stronger responses focused on careful and concrete application rather than general discussion.
- Generally, most assignments were well set out and a reasonable attempt was made to explain the implications in a structured manner. Marks were awarded for clear identification of all relevant rules, for accurate unpacking of the conditions for their application and for a logical application to the facts and reasonable assumptions. Overly lengthy assignments were penalised.
- Largely, the assignments and results portray that the learning was effective, though attention is to be given to detail and selective application to the facts of the case, or reasonable assumptions thereto. Students who identified the relevant issues across the Directives, respected the word count, structured their answers coherently, addressed the applicability criteria of the relevant provisions in the context of the assignment question, and, supported their reasoning with correctly selected case law, generally obtained stronger results.