

Examiner's Feedback Report – Module C 2024-2025

The assignment question required candidates to consider the tax treaty and transfer pricing implications and risks associated with the operations of Height Group, which had operations in various jurisdictions.

The question required candidates to consider the beneficial ownership and transfer pricing issues which Height B Ltd could face because of its limited substance in Country B, as well as its distribution policies. From a beneficial ownership perspective, candidates were expected to refer to the OECD Commentaries as well as case law, while from a transfer pricing perspective the concept of DEMPE functions was expected to be considered.

Candidates were also expected to consider the permanent establishment issues which Height C Ltd could face because of its work-anywhere model by reference to the concept of home office as per OECD Commentary.

Another permanent establishment issue that candidates were expected to consider relates to the agency permanent establishment issues Height D Ltd could face because of its employees negotiating contracts in Country F.

Performance in this assignment was just about satisfactory. An assignment requires candidates to carry out their own in-depth research into the subject, and not just rely on information provided during the lectures. It appears that in most cases, this in-depth research was not performed.

Most candidates correctly identified the agency PE issue, the risk of a home office and the risk of Height B Ltd not being considered the beneficial owner of the dividends and royalties it derives. However, it appears that candidates mostly relied on the OECD Commentaries in order to provide their answers, with little further research on the topic. While this may be acceptable in an exam format, further research is expected in an assignment. By way of example, with respect to the risk of a home office, I would have expected reference being made to the practice in some jurisdictions. On beneficial ownership, I expect candidates to go beyond the OECD Commentary by referring to case law on the subject.

Transfer pricing analysis and consideration of whether Height B Ltd had DEMPE functions in country B were mostly ignored. The facts of the case clearly showed that the DEMPE functions were not in country B, meaning that the royalties which Height B Ltd was being paid could be challenged by other jurisdictions. Candidates just limited their comments to provide that one should ensure that the royalties were at arm's length – thereby showing little understanding of the transfer pricing issues being considered.

The preparation of the assignment allows candidates more time to prepare as well as allows them access to information and materials. More time to research is required when preparing the assignment and proper referencing of materials is also a must.