

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2026

MODULE 2.06 – IRELAND OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Mr J. Smith
c/Megacorp
State M
5/1/26

Dear John

You have asked our advice on your Irish tax position on your secondment by your employer Megacorp.

Approach taken

I have analysed your residence and domicile position as it affects employment and other areas. I then analysed each of your sources of income and gains.

John and Anna residence and domicile position

Residence

They will remain resident in State M for 2026 as they will be in Ireland for less than 183 days.

They will be Irish resident for 2027-2031 with over 183 days presence

Ordinary residence

They will become ordinary residents of Ireland in 2030 with 3 years residence 2027-2029 inclusive.

Ordinary residence ceases in 2035 after being non-resident for 2032-2034 inclusive.

However, on their return to M, treaty residence in M can override Irish ordinary residence as it is covered by Art 4(1) of the DTA.

They will have no permanent home in Ireland after departure per DTA Article 4(1)(2)(a).

Therefore, ordinary residence will not apply after departure.

Implications of residence and domicile

<u>Residence status</u>	<u>Taxable on</u>
Non-resident	Irish sourced income. Gains on Irish land/buildings and shares deriving value from it.
Resident	Worldwide income and gains
Ordinarily resident	Worldwide income and gains but excluding: • Trades/professions and employments wholly exercised abroad • Other foreign income if < €3,810. If exceeded, all taxable

Domicile

John has a domicile of origin in M. He retains this.

Anna has an Irish domicile of origin. She can argue that her long residence and ties with M create a domicile of choice. Returning to Ireland temporarily would not restore the domicile of origin. She should maintain her claim to M domicile in all Revenue returns and relevant legal documents. She should maintain links with M such as voting in elections.

Effect of domicile

Income taxable under Schedule D Case III qualifies for the remittance basis i.e. taxed only when received in Ireland. This also applies to gains on foreign assets.

It is advised that any such income and gains should be kept in separate bank accounts from the proceeds of pre-arrival period as otherwise remittance of old income/gains could be taxed in Ireland.

Taxation of employment**Megacorp perspective**

Per DTA Article 15 income from employment is taxable only in the state of residence unless exercised in the other state.

For 2026 the State of residence is M but the employment will be exercised in Ireland.

The employment is foreign because it is:

- Under a foreign contract
- Paid abroad
- Borne by the foreign entity

A foreign employment does not qualify for the remittance basis where exercised in Ireland.

Employment income is taxed under Schedule E per S19 TCA 1997. Megacorp must:

- Register as an employer
- Operate the PAYE system to deduct Income Tax, Universal Social charge and USC for each pay period. This is operated on the Irish Revenue's ROS portal. Megacorp Ireland entity must obtain an Irish tax ID for John known as a PPSN PPSN from the Department of Social Protection.

Special Assignee Relief Programme (SARP)

SARP provides a number of reliefs for qualifying temporary secondments into the State. For a secondment to be temporary Revenue require it to be no longer than the secondees previous employment John meets this requirement as he has been employed since 2005.

SARP reduces taxable emoluments as follows:

- (Emoluments -100,000) x 30%
- Emoluments are reduced by Employee pension contributions
- Amounts for which DTA relief applies

Conditions for the employment to qualify are per S825 TCA 1997.

<u>Conditions</u>	<u>Met?</u>
Employed at least 6 months before secondment wholly outside Ireland	Yes
Arrive in Ireland at employer's request to take up employment with existing employer or associated company	Yes
Was not Irish resident for the previous 5 years	Yes
Will be resident in year of arrival or the following year	Yes
Emoluments excluding BIK, perks, RSUs, options, bonus or commission >= €100,000	Yes

SARP also allows:

- The cost of one return flight home for John and his family. Any additional flights will be a taxable emolument per S112 TCA 1997.
- Primary and second level fees up to €5,000 per annum. Any amount exceeding this is taxable under S 112 TCA 1997.

SARP filing obligations:

- Megacorp must apply for SARP within 90 days of John's arrival in Ireland i.e by 1st December 2026.
- Certification is not repeated but Megacorp must file a SARP return by 23rd February after each tax year.

Accommodation costs

The Revenue Taxes and Duty Manual on subsistence payments allows the payment for 12 months of reasonable accommodation.

Any period after that will be taxable at the market rental of the accommodation per S118 TCA 1997. Megacorp is paying for two years. The first year will be tax free with SARP. After that the benefit is taxed as the market rental..

Fees for tax advice

These are not deductible as wholly, exclusively and necessarily for John's employment per S114 TCA1 1997. Therefore, the cost of this advice is taxable under Schedule E through PAYE per S118 TCA 1997.

Restricted Stock Units

RSUs vesting in the Irish employment period will be taxable under Schedule E at market rate of the shares on vesting. Tax is on the arising basis. There is no allocation between Irish and foreign employment periods.

Share options

Share options with less than 7-year vesting periods are taxed on vesting per S128 TCA 1997. The taxable amount is equal to market value at vesting, minus option price.

Article 15 of the DTA provides that each state has taxing rights on emoluments derived from the exercise of the employment in that state.

Para 12. 2 of the Commentaries on Article 15 allow taxing rights even where the payment arises after that period is exercised.

Ireland will therefore have taxing rights only over the gain apportioned to the period of exercise in Ireland.

This would also be the case if exercised after the return to the home state.

PRSI will be payable as will Employers PRSI as all activities are in the State.

Split year residence

In the year of arrival, 2026 John will be non-resident. He will be resident for the year of departure, 2031. However, he can avail of split-year residence relief as he will be non-resident the following year.

He will not be taxable in Ireland on employment income from Megacorp in State M in that year.

He can claim this relief on his Form 11 return for that year.

Personal taxes

John and Anna will be chargeable persons, obliged to file Form 11 self-assessment returns by 31 October after year-end.

Anna pension

Per Article 19 (1) this income is only taxable in M, as arising from government service.

Article 19 (2) does not apply to give rights to Ireland. Anna is an Irish national, but the duties were not performed in Ireland.

Dividends

Dividends from shares and funds will be taxable in Ireland per Article 10 DTA. State M may only tax at 15%. This includes all shares and funds held, whether acquired from the Megacorp employment or purchased separately.

Credit is given in Ireland for State M taxes but limited to tax on dividends remitted.

Income from crypto currency

Revenue regard cryptocurrency as an Irish asset as there is no determinate foreign situs. The remittance basis will not apply. This will be fully taxable in Ireland under Sch D Case IV.

Rental income MM

M has primary taxing rights. The remittance basis applies. Credit in Ireland for M tax on amounts remitted.

Chargeable gains

Chargeable gains on any asset disposals are only taxable in the state of residence per Article 13 DTA.

Ireland charges to CGT during ordinary residence i.e. 2032 onwards. Taxable only in Ireland while resident or ordinarily resident. However, ordinary residence will be negated by State M M treaty residence after departure.

The remittance basis applies to disposals subject to CGT.

Non-domiciled individuals cannot use losses on foreign assets.

ETFs and other funds

Gains on funds such as UCITs and certain ETF structures are taxed under Schedule D Case IV not CGT and do not qualify for the remittance basis per S747D TCA 1997.

If we have prospectuses for the investments, we can advise on the correct treatment.

Part C – Foreign inheritance

As outlined above, John and Anna are both domiciled in State M.

Unless they have been resident for the 5 previous tax years, he will only be liable to Irish Capital Acquisitions Tax (CAT) on benefits consisting of Irish assets.

Depending on State M's gift tax legislation, John's father could consider gifting assets to him and/or Anna before the 5-year residence period has elapsed.

John has a lifetime exemption threshold of €400,000 on benefits from parents. Gifts or inheritances within the 5-year exemption period do not erode this.

Unilateral relief is available for any M inheritance or gift taxes.

Question 2

This memorandum sets out the principal Irish tax features relevant to Nexigen Ireland Ltd acting as the European sub-holding company and IP company for the Nexigen group. The analysis addresses taxation of income from subsidiaries, taxation of capital gains, withholding taxes on remittances to the Swiss parent, and relevant general features of the Irish regime. It is prepared in the context of the proposed structure in which Nexigen Ireland Ltd will receive royalty income from European operating subsidiaries and dividend income from the European subsidiary companies it holds.

Corporation Tax Rates and Trading Status

The two-rate system. Ireland operates a dual rate of corporation tax. Trading income is subject to tax at 12.5%, while passive/non-trading income is taxed at 25%. There is no capital contribution tax in Ireland, which is a practical advantage for capitalising a new holding company.

Trading status of Nexigen Ireland Ltd. Whether Nexigen Ireland Ltd.'s royalty income qualifies for the 12.5% rate is the most critical tax question for the group. Royalty income is not automatically trading income in Ireland; its character depends on whether the company is carrying on a trade in Ireland.

Irish Revenue guidance (often referred to by reference to the Noddy case and Revenue's practice statements) sets out the substantive requirements for an IP company to be regarded as trading:

- A commercial rationale for the Irish operations: the company should be profitable, and day-to-day running costs should be borne in Ireland without reimbursement from an overseas parent.
- Real value added to the Irish economy: the activities in Ireland must be more than the mere passive holding and exploitation of IP. The level of activity must be significant, habitual and ongoing.
- Acceptance of commercial risk: the company should bear the economic risks of the IP exploitation business, not simply receive a passive income stream.
- Qualified employees in Ireland with the skills and expertise needed to manage and exploit the IP.
- Dedicated office space in Ireland.
- Active engagement with multiple licensees, negotiating new agreements and managing the IP portfolio.

Application to Nexigen Ireland Ltd: The proposed structure is strongly positioned to satisfy the trading test. The appointment of ten qualified employees in Cork — including IP management specialists, a CFO, legal counsel and an experienced Irish-resident CEO — demonstrates genuine substance. The group should ensure that key decisions regarding the IP portfolio (new licences, renewals, enforcement, R&D strategy) are made in Ireland and that employees actively manage the licensing programme. Provided these conditions are met, Revenue should accept that the royalty income is trading income taxable at 12.5%.

Pillar Two / QDMTT consideration. Ireland implemented the OECD/G20 Pillar Two Global Minimum Tax rules, which in Finance (No. 2) Act 2023 effective for fiscal years commencing on or after 31 December 2023. Ireland has enacted a Qualified Domestic Minimum Top-Up Tax (QDMTT). Where the Irish Effective Tax Rate (ETR) — computed under the GloBE rules on a jurisdiction-by-jurisdiction basis — falls below 15%, Irish Revenue will collect a top-up tax in Ireland. The practical impact of the QDMTT is that Ireland retains any Pillar Two revenue rather than it being collected by Nexigen AG's parent jurisdiction.. The group should model the Pillar Two position prior to commencing Irish operations.

Taxation of Dividend Income from European Subsidiaries

The credit system. Ireland does not operate a participation exemption for dividends (unlike, for example, the Netherlands or Luxembourg). Instead, Ireland operates a credit system. This is widely regarded as a comparative weakness of Ireland as a holding company location because it creates greater administrative complexity and makes it more difficult to forecast effective tax rates with certainty. However, the credit system is designed to ensure that Irish tax on dividends broadly mirrors the underlying foreign tax, and in practice often results in little or no net Irish tax arising.

Rate of tax on dividends. Dividends received by Nexigen Ireland Ltd from its European subsidiaries (Germany, France, the Netherlands) will be taxed at 12.5% where the dividend is paid out of trading profits and the subsidiary is resident in an EU member state or a country with which Ireland has a double tax agreement (which includes all three jurisdictions). Dividends from non-trading income sources of the subsidiary are taxed at 25%.

Onshore pooling of credits. Ireland provides for a system of onshore pooling of tax credits. Foreign tax includes both withholding taxes deducted at source on the dividend and the underlying corporation tax paid by the paying subsidiary in its country of residence. The onshore pooling system allows Nexigen Ireland Ltd to mix credits from different dividend streams within two separate pools:

- The 12.5% pool: credits from dividends taxed at 12.5% are combined within this pool, allowing excess credits on one dividend to offset Irish tax on another dividend in the same pool.
- The 25% pool: separately maintained for dividends taxable at 25%.

Unused credits can be carried forward indefinitely and applied against future dividends in the same pool. The credit system applies where Nexigen Ireland Ltd holds at least 5% of the ordinary share capital of the relevant subsidiary. As Nexigen Ireland Ltd will hold 100% of each European subsidiary, this threshold is satisfied.

Foreign underlying tax is traced through the subsidiary's full corporate tax chain (not capped at one tier) and includes both state and municipal-level taxes. This is particularly relevant for the German subsidiaries, where the effective combined federal and trade tax rate typically exceeds 30%, and where the pooling mechanism may generate substantial excess credits that can be carried forward.

Additional EEA nominal rate credit. Where the credit under Ireland's normal rules is less than the credit calculated by reference to the nominal rate of tax in the EEA source country, an additional credit (the 'nominal rate credit') is available. This credit is capped at the lower of the nominal foreign rate and the applicable Irish rate (12.5% or 25%). For the Nexigen group, this may be relevant where the effective rate paid by a subsidiary is below the nominal rate (for example, due to incentives in that jurisdiction).

Taxation of Capital Gains — Participation Exemption (Substantial Shareholder Relief)

The exemption. Gains arising on the disposal of shares in a subsidiary company by Nexigen Ireland Ltd are exempt from Irish capital gains tax (CGT) under the substantial shareholder exemption (also referred to in legislation as the investor/investee exemption). An equivalent exemption applies to the disposal of assets related to shares, including options and securities convertible into shares.

Conditions for the exemption. The exemption is subject to four conditions, all of which must be satisfied:

- 1) Minimum shareholding: Nexigen Ireland Ltd (the 'investor') must directly or indirectly hold at least 5% of the ordinary share capital of the subsidiary (the 'investee'), be beneficially entitled to at least 5% of profits available for distribution to equity holders and be beneficially entitled to at least 5% of the assets available on a winding-up. Shareholdings held by other companies in a 51% group with the investor may be aggregated. As Nexigen Ireland Ltd will hold 100% of each European subsidiary, this condition is comfortably satisfied.
- 2) Holding period: The shareholding must have been held for a continuous period of at least 12 months within the two-year period immediately preceding the disposal. This is a key planning point: the exemption will not be available on disposal of a newly acquired subsidiary until the 12-month period has elapsed.
- 3) Trading requirement: The business of the investee must consist wholly or mainly of the carrying on of a trade or trades. This test can be satisfied on a group basis: where the combined businesses of the investor company, its 5% subsidiaries and the investee, taken together, consist wholly or mainly of trading activity. For Nexigen Ireland Ltd, the European operating subsidiaries are all trading companies, so the group trading test should be satisfied even though Nexigen Ireland Ltd itself may be characterised as primarily a holding/IP company.
- 4) Qualifying company: The investee must be a qualifying company, meaning: (a) it does not derive the greater part of its value from Irish land, buildings, minerals or exploration rights; and (b) it is resident in an EU member state (including Ireland) or a country with which Ireland has a double taxation agreement. Germany, France, the Netherlands, Singapore and the US all have DTAs with Ireland, so all subsidiaries should be qualifying companies.

Losses on subsidiary shares. Where the exemption conditions are met, no loss relief is available on a disposal giving rise to a loss (or on a negligible value claim). Capital losses on share disposals that do not qualify for the exemption can only be offset against capital gains, not against income. This asymmetric treatment should be considered in any disposal planning.

Non-resident CGT

Gains realised by Nexigen AG (as the Swiss parent) on a future disposal of its shares in Nexigen Ireland Ltd are generally not subject to Irish CGT, unless the shares in the Irish company derive the greater part of their value from

Irish land, minerals or exploration rights. A pharmaceutical holding company's value is derived from its IP, subsidiaries and business operations, not land, so Irish CGT should not arise on any future Swiss disposal of Nexigen Ireland Ltd.

Withholding Taxes on Remittances from Nexigen Ireland Ltd to Nexigen AG (Switzerland)

There are three principal forms of remittance from Nexigen Ireland Ltd to Nexigen AG in Switzerland: dividends, interest and royalties. Each carries a different withholding tax regime.

Dividend Withholding Tax (DWT). Under Irish domestic law, dividends paid by an Irish resident company are subject to DWT at 20%. However, extensive exemptions apply.

EU Parent-Subsidiary Directive

The Directive provides for a full exemption from DWT on dividends paid by an Irish resident company to a parent company resident in another EU member state, subject to a minimum 5% shareholding. Switzerland is not an EU member state and therefore the Directive does not apply directly.

Domestic exemption (s.172D TCA 1997): Dividends paid by Nexigen Ireland Ltd to Nexigen AG in Switzerland may qualify for exemption from DWT under the domestic exemption in s.172D TCA 1997, provided that:

- Nexigen AG is resident in Switzerland (a treaty partner jurisdiction — Ireland-Switzerland DTA is in force); and
- Nexigen AG is not ultimately controlled by Irish-resident persons.

Where these conditions are met, Nexigen Ireland Ltd may pay dividends gross of DWT once Nexigen AG has provided the required declaration in the prescribed form (Form V2A or equivalent) confirming its entitlement to the exemption. There is no minimum shareholding requirement for the domestic exemption.

Ireland-Switzerland DTA

The Ireland-Switzerland double tax agreement (based on the OECD Model Convention) provides a secondary basis for relief. Under the DTA, the withholding tax rate on dividends is reduced to 0% where the beneficial owner is a company holding at least 10% of the capital of the Irish company, or 15% in other cases. Given that Nexigen AG will hold 100% of Nexigen Ireland Ltd, the 0% treaty rate should apply. However, in practice the domestic exemption is the more commonly used relief.

Interest Withholding Tax. Irish domestic law imposes a 20% withholding tax on 'yearly interest' paid by a company (broadly, interest on borrowings with a term exceeding one year). Short-term interest on borrowings of less than one year is not subject to withholding.

Where Nexigen Ireland Ltd pays interest to Nexigen AG (e.g. on intercompany loans used to fund the structure), the following reliefs should be considered:

- Domestic exemption: under s.246 TCA 1997, interest paid to a company resident in a treaty partner jurisdiction (including Switzerland) may qualify for gross payment, subject to the recipient meeting the relevant conditions and providing a declaration.
- Ireland-Switzerland DTA: reduces the withholding rate on interest to nil for a beneficial owner in the other contracting state, subject to the anti-abuse provisions introduced under the MLI (Principal Purpose Test).
- EU Interest and Royalties Directive: this exempts cross-border interest and royalty payments between associated EU companies. As Switzerland is not an EU member state, this Directive does not apply to payments from Nexigen Ireland Ltd to Nexigen AG.

Patent Royalty Withholding Tax

Irish withholding tax on royalties applies only to patent royalties (not to other forms of IP royalty such as copyright or know-how). The rate is 20%. Payments for the use of patented drug formulations such as those held by Nexigen Ireland Ltd would constitute patent royalties and are therefore within scope.

However, the withholding tax obligation on royalties paid by Nexigen Ireland Ltd to Nexigen AG may be eliminated or reduced by:

- Domestic exemption (s.757 TCA 1997): an exemption from patent royalty withholding tax applies where the royalty is paid to a company resident in an EU member state or a treaty partner jurisdiction and certain conditions are met. As Switzerland is a treaty partner, this exemption should be available.
- Ireland-Switzerland DTA: Article 12 of the OECD Model (on which the Ireland-Switzerland DTA is based) provides that royalties paid to a resident of the other contracting state are taxable only in that state (i.e. Switzerland), meaning Ireland has no right to withhold tax.
- Concessionary exemption: a Revenue concession also applies to patent royalties paid to a company not resident in a DTA territory, subject to conditions — however this is less relevant here as Switzerland has DTA coverage.

Note: The most reliable mechanism for Nexigen Ireland Ltd is the domestic exemption under s.757, supported by a declaration from Nexigen AG confirming its Swiss residence. This should be obtained and kept on file before any royalty payments commence.

Other General Features of the Irish Regime

No capital contribution tax

There is no stamp duty, capital duty or capital contribution tax on the issue of shares in Ireland. This is a practical benefit when capitalising Nexigen Ireland Ltd.

Extensive DTA network

Ireland has 76 signed double tax agreements, of which 73 are currently in force. Ireland has confirmed 71 as covered tax agreements under the OECD Multilateral Instrument (MLI), which Ireland ratified in May 2019. The MLI has introduced a Principal Purpose Test (PPT) across most of Ireland's treaties, including the Ireland-Switzerland DTA. Under the PPT, treaty benefits can be denied where one of the principal purposes of an arrangement was to obtain those benefits. The Nexigen group's proposed structure should be driven by genuine commercial rationale (Swiss headquartering, European hub, IP management substance), which will be important evidence against any PPT challenge.

Anti-abuse / GAAR

Ireland has a general anti-avoidance provision under s.811C TCA 1997, which allows Revenue to recharacterise transactions that constitute 'tax avoidance transactions' — broadly, transactions that lack commercial substance and have a main purpose of obtaining a tax advantage. In practice, Revenue has rarely invoked this provision, but the Nexigen group should ensure that the Irish structure is commercially justified and documented.

Controlled Foreign Company (CFC) rules

Ireland introduced CFC rules from 1 January 2019 (Finance Act 2018), implementing the Option B approach under ATAD. The Irish CFC rules are targeted in scope: a CFC charge will only arise on the Irish parent company to the extent that: (a) the CFC has undistributed income; and (b) that income is generated by reference to significant people functions or assets located in Ireland (i.e. the Irish company has, in substance, generated the income of the CFC through its own activities). There are several exemptions, including an exemption where the CFC's effective tax rate is at least 50% of the Irish rate (i.e. at least 6.25%). For the Nexigen group, CFC charges are unlikely to arise in respect of the trading European subsidiaries (Germany, France, Netherlands), which pay tax at rates well above the threshold, but should be reviewed in respect of any low-tax entities in the group.

Country-by-Country Reporting (CbCR)

An Irish-resident constituent entity of the group will be required to notify Irish Revenue of its CbCR status before the end of the relevant reporting period based on its total group revenues..

Tax rulings and APAs

No advance ruling is required to apply the holding company regime. However, where there is doubt about the trading status of Nexigen Ireland Ltd or the availability of the CGT participation exemption (e.g. whether the trading group test is satisfied), the group may seek a non-binding opinion from Revenue. Ireland also operates a formal bilateral Advance Pricing Agreement (APA) programme from 1 July 2016, available for complex transfer pricing issues including the attribution of profits to permanent establishments.

PART B

Question 3

Wealthy individuals can use personal and capital mobility to transfer income to foreign entities to avoid Irish Income Tax.

Irish legislation has specific provisions to counter individuals using non-resident structures to place income outside the charge to Irish tax.

The specific provisions are contained in Part 33 Chapter 1 TCA 1997, “Transfer of assets abroad.”

S806 and 807A, Transfer of Assets abroad for Income Tax

These provisions apply by looking through non-resident entities and attributing the income and gains to Irish resident or ordinarily resident individuals.

These residents may be either:

- The settlers/shareholders of foreign entities or
- The beneficiaries of the income or gains

S806 Transfer of assets abroad

S806 (3) applies where an Irish resident or ordinarily resident individual transfer assets so that income arises to “persons resident or domiciled out of the State.

Persons can include individuals, companies, funds, or trusts.

S806 defines assets as including property or rights of any kind S 06 (1). The term “transfer” can be confusing. An asset need not exist in Ireland at the outset.

Transfers include any associated operations either before or after the transfer, e.g... creation of rights within a company.

For example, setting up a non-resident company with nominal share capital is a transfer because the issue of the shares creates a right in the foreign person.

The section applies where the individual transferor either:

- Has the power to enjoy the income of the foreign entity or
- Receives or is entitled to receive a capital sum from the foreign entity.

Power to enjoy

This includes:

- The direct right to receive income, e.g., a shareholder right to a dividend.
- Accuracy of the income increases the value of the individual’s assets.
- Holding the power of appointment or revocation
- Individual’s ability to influence the appointment of income directly or indirectly.

The section applies even if the transfer and/or associated operations take place when the individual is neither resident nor ordinarily resident. For example, an individual who sets up a structure before moving to Ireland will still be caught by the legislation.

The income of the foreign person is attributed to the settler of the arrangement. It is taxed under Schedule D Case IV, so the remittance basis does not apply.

S807A

A taxpayer could avoid S806 by ensuring that the income goes to someone without power to enjoy the income e.g., to the beneficiaries of an irrevocable trust.

S807A counters this by attributing income to “non-transferors”, resident or ordinarily resident individuals, “who receive a capital sum from the foreign “person”.

The beneficiary may also incur Capital Acquisitions Tax on benefits e.g., from a foreign trust. There are no provisions for offsets between the two tax heads.

The non-transferor is taxable under Schedule D Case IV with no remittance basis.

Payment of tax by the foreign person will not be treated as further taxable income in Ireland.

Bona fide provisions

Bona fide provisions can apply to exempt from 806 and 807A.

For arrangements after 1/2/2007 these are as follows:

It would be unreasonable to conclude that avoidance was a sole or main purpose,

Or

All the transactions were commercial transactions,

And

It would be unreasonable to conclude that avoidance was any more than an incidental motive.

Commercial activities relate to establishing or carrying on a trade or business. Investment businesses must be totally arms-length,

Or

The non-resident person carries on genuine economic activities in an EU/EEA state or the United Kingdom. This is to comply with the EU/EEA freedom of establishment and free movement of capital.

Double Tax Agreements

The provisions are in accord with the OECD MTC because

- the foreign entity will be taxed in its state of residence. A transparent foreign entity would not be effective to transfer income.
- Ireland would have taxing rights on the individuals unless they were treaty resident elsewhere.

Question 4

Candidates will be expected to prepare an answer in memorandum format which covers the following:

Debt financing

General Interest Deductibility

The general rule. Interest is deductible for Irish corporation tax purposes where it is provided for as an expense in the statutory accounts and is incurred wholly and exclusively for the purposes of the company's trade. For Pollyanna Resources Ireland, which is an operating R&D and commercialisation company, interest on borrowings used to fund its trading activities should satisfy this test in the normal course.

Acquisition financing. Subject to specific conditions, interest incurred in lending money to, or acquiring shares in, a trading company (or a holding company of such a company) is also deductible on a paid basis. Interest relief is however restricted where the interest is paid in connection with acquiring shares in or lending money to a connected company. Any intragroup lending arrangements should be structured carefully to avoid this restriction, and all intercompany interest rates must comply with arm's length transfer pricing rules.

ATAD Interest Limitation Rule (ILR)

The cap. Ireland implemented the ATAD Interest Limitation Rule in Finance Act 2021, effective for accounting periods commencing on or after 1 January 2022. The ILR limits the deduction for net borrowing costs (interest expense net of interest income) to 30% of tax-EBITDA (adjusted earnings before interest, taxes, depreciation and amortisation). Given that Pollyanna Resources Ireland is loss-making, its EBITDA may be low or negative, which could significantly restrict the interest deductible in any given period.

De minimis. The ILR does not apply where net borrowing costs do not exceed €3 million in the accounting period. Depending on the scale of Pollyanna's Irish borrowings in early years, this threshold may provide relief.

Group ratio / equity ratio rules. Where the 30% cap would otherwise restrict a deduction, the Irish company may instead apply the group ratio rule or equity ratio rule, which allow interest deductions up to the level permitted by reference to the worldwide group's net interest/EBITDA ratio or equity ratio respectively. These rules are particularly valuable for groups with significant leverage at a global level.

Other exemptions. The ILR does not apply to standalone entities, legacy debt (borrowings agreed before 17 June 2016) or certain long-term public infrastructure projects. None of these are likely to be relevant to Pollyanna Resources Ireland as a new group entity.

Carry-forward. Disallowed net borrowing costs may be carried forward indefinitely and deducted in future periods when capacity is available. Surplus interest capacity in a period may be carried forward for up to five years.

Thin Capitalisation

Ireland does not have formal thin capitalisation rules limiting the debt-to-equity ratio of Irish companies. However, interest paid to certain connected non-resident companies may be reclassified as a distribution in limited circumstances, rendering it non-deductible for corporation tax and subject to dividend withholding tax. This risk is most relevant where the borrowing terms are not at arm's length. The risk is mitigated where the lender is resident in an EU member state or a treaty partner jurisdiction (which includes the US parent). All intercompany pricing should be supported by contemporaneous transfer pricing documentation.

Interest Withholding Tax on Outbound Payments

Irish domestic law imposes 20% withholding tax on yearly interest (interest on a borrowing of one year or more) paid by an Irish company. Short-term interest on borrowings of less than one year is not subject to withholding. The following reliefs are most relevant for Pollyanna Resources Ireland making payments to US group entities:

- EU Interest and Royalties Directive: provides a full exemption from withholding on interest between associated EU companies. As the US is not an EU member state, this Directive does not apply to payments from Pollyanna Resources Ireland to Pollyanna US, Inc.
- Ireland–United States DTA: Article 11 of the Ireland-US DTA reduces the withholding rate on interest to nil for a beneficial owner resident in the US. Accordingly, interest paid to Pollyanna US, Inc should be payable gross, subject to the recipient providing the necessary declaration of US residence and beneficial ownership.

- Domestic exemption (s.246 TCA 1997): a domestic exemption from interest withholding also applies to interest paid to companies resident in treaty partner jurisdictions, including the US, subject to conditions being met.

Anti-Hybrid Rules

Ireland implemented anti-hybrid rules in Finance Act 2019 with effect from 1 January 2020, implementing ATAD Article 9. These rules target arrangements that produce a deduction without inclusion or double deduction outcome by exploiting differences in the tax characterisation of an instrument or entity between two jurisdictions. Finance Act 2021 extended the rules to reverse hybrid entities with effect from 1 January 2022. Any financing instruments used in the Pollyanna group structure should be reviewed to ensure no hybrid mismatch arises.

EU DEBRA Proposal

In May 2022 the European Commission published a draft Directive on a Debt-Equity Bias Reduction Allowance (DEBRA), which proposes both a notional interest deduction on equity and additional interest restrictions, to apply alongside the existing ILR. The Directive was not agreed by the originally proposed implementation date of 31 December 2023 and remains under discussion. The group should monitor its progress as, if enacted, it would apply across all EU member state operations.

Part (b)

Rate and basis. Pollyanna Resources Ireland's expenditure on qualifying research and development activities may qualify for the R&D tax credit under s.766 TCA 1997. The credit is calculated at 30% of qualifying R&D expenditure (increased from 25% by Finance Act 2022 with effect from 1 January 2023) and is applied to reduce the company's corporation tax liability.

Qualifying conditions

A company qualifies for the credit where:

- It is within the charge to corporation tax in Ireland — which Pollyanna Resources Ireland is.
- It carries out qualifying R&D activities in Ireland or the EEA — confirmed by the facts.
- The expenditure has not qualified for a tax deduction in another jurisdiction in respect of the same activities — this requires analysis of the cost-sharing arrangement (see below).

Qualifying R&D activities. Activities must involve systematic, investigative or experimental activities in the field of science or technology, comprising basic research, applied research or experimental development, that seek to achieve scientific or technological advancement and involve the resolution of scientific or technological uncertainty. The development of AI software for interior design applications is likely to satisfy these criteria, but contemporaneous documentation should be maintained to support any claim.

Outsourced R&D. Up to 15% of qualifying expenditure may be outsourced to unconnected third parties and still qualify for the credit. R&D outsourced to connected parties or exceeding the 15% threshold does not qualify.

Payable credit for loss-making companies. Where Pollyanna Resources Ireland has no current or prior year CT liability against which to offset the credit, it may claim the credit as a payable (cash) refund. The refund is paid in three equal annual instalments over three years, with the first instalment available only after the company has exhausted all current and prior year CT liabilities. Given that the company is not expected to be profitable for several years, this is the most practically relevant feature of the regime for Pollyanna.

Claims deadline. Claims must be submitted within 12 months of the end of the accounting period in which the R&D expenditure is incurred. Pollyanna Resources Ireland should review whether prior period claims remain open and file promptly.

Cost-sharing arrangement and the R&D credit. The interaction between the cost-sharing arrangement and the R&D credit requires careful analysis. The credit is available on R&D expenditure incurred by the claimant company in carrying out qualifying activities. Where expenditure is borne under a cost-sharing arrangement, Pollyanna Resources Ireland must demonstrate that it has genuinely incurred the qualifying expenditure and that the underlying activities qualify. Revenue may scrutinise arrangements where the cost-sharing structure means the Irish company is effectively funding R&D carried out primarily in the US. The arm's length nature of the cost-sharing arrangement and the substance of Irish R&D activities should be documented carefully.

Knowledge Development Box (KDB)

The KDB was introduced in Finance Act 2015 and provides for an effective corporation tax rate of 6.25% (rather than 12.5%) on qualifying profits arising from qualifying intellectual property assets that are the result of qualifying R&D activity carried out by the Irish company.

Qualifying assets include:

- Inventions protected by a qualifying patent.
- Copyrighted computer software.
- Inventions of small companies that are patentable but have not been patented and are kept secret.

Marketing-related intangibles (trademarks, brands, image rights) do not qualify. Given that Pollyanna Resources Ireland holds both patented IP and copyrighted AI software arising from qualifying R&D activity, the company's assets appear capable of qualifying.

The KDB implements the OECD's modified nexus approach (BEPS Action 5). The proportion of qualifying profits eligible for the 6.25% rate is determined by a nexus fraction:

$$\text{Nexus fraction} = (\text{Qualifying expenditure} \times 1.3 \text{ uplift}) \div \text{Overall expenditure}$$

Where qualifying expenditure is R&D carried out directly by Pollyanna Resources Ireland or outsourced to unconnected third parties, and overall expenditure includes all R&D costs including amounts paid to connected parties and the cost of acquired IP. The nexus fraction is applied to total qualifying profits to determine the profits eligible for the KDB rate.

The impact of the cost-sharing arrangement and acquired IP is directly relevant to the Pollyanna facts. Expenditure incurred by Pollyanna Resources Ireland under the cost-sharing arrangement with Pollyanna US, Inc (a connected party) is treated as acquired IP expenditure for nexus purposes: it is included in overall expenditure but not in qualifying expenditure. Similarly, IP acquired through the group's strategic acquisitions of third-party companies is treated as acquired IP and further reduces the nexus fraction. The practical effect is that the proportion of profits eligible for the 6.25% KDB rate will be lower than the company's total qualifying profits, potentially significantly so given the split R&D structure. The group should model the nexus fraction carefully before filing.

Income cap. Qualifying profits eligible for the KDB cannot exceed 80% of the trading income of the company for the relevant accounting period.

Capital Allowances on Intangible Assets (s.291A TCA 1997)

Section 291A TCA 1997 provides capital allowances on the cost of acquiring specified intangible assets used for the purposes of a trade carried on by an Irish company. This is a significant relief given that Pollyanna Resources Ireland has acquired IP (including from strategic acquisitions) under the cost-sharing arrangement.

Specified intangible assets include patents, copyrights, know-how, trademarks, brand names, domain names and customer lists, among others. Both the patented IP and copyrighted AI software held by Pollyanna Resources Ireland should qualify.

Allowances are available at 12.5% per annum over 8 years, or alternatively over the accounting useful life of the asset where the company elects to follow the accounting amortisation period. The latter is often preferable where assets are amortised over a shorter period in the accounts.

The aggregate of capital allowances and related interest on borrowings to acquire the intangible assets cannot exceed 80% of the trading income derived from those assets in the accounting period. Unused allowances are carried forward to future periods. Given that Pollyanna Resources Ireland is currently loss-making, the 80% cap may defer allowances into future profitable periods; the timing impact should be modelled.

To the extent that Pollyanna Resources Ireland has borne the cost of acquiring IP (including IP from strategic acquisitions) under the cost-sharing arrangement, the capitalised cost should qualify for s.291A allowances, subject to Revenue being satisfied that the arrangement is at arm's length and that the Irish company has genuinely acquired an interest in the relevant intangible assets.

PART C

Question 5

To: John and Sarah Miller
Date: 22/2/2026

Dear John and Sarah

You have asked our advice on how to best utilize the remittance basis of taxation on your proposed move to Ireland. The following analysis reviews the position for each of your sources of income and gains.

Taxation of Irish residents

Irish residents are taxable on worldwide income and gains. You are Irish resident for a calendar tax year if you are present for:

- 183 days in that year or
- 280 days aggregating the current and previous tax year.

Any year with under 30 days presence is ignored.

Non-domiciled

However, non-domiciled individuals qualify for the remittance basis of taxation on certain foreign income and gains. This means that tax only arises when the proceeds of the income or gains are received (remitted) into Ireland for:

- Income Tax on foreign sourced income taxed under Schedule D Case III per S71 (2) TCA 1997 and
- Capital Gains tax on disposals of foreign assets per S 29 (4) (a) TCA 1997.

It is also important to note, however, that a non-domiciled individual cannot use losses from the disposal of foreign assets per S 29 94) (b).

What constitutes a remittance?

For Income Tax S71, tax is charged on:

- Actual sums received in the State.
- Property imported
- Money or value arising from property not imported.
- Money or value received in the State on credit or on account.

Therefore, using the State X credit card in Ireland will be a remittance of State X income, taxable in Ireland.

Recommendation

You should use separate Irish credit cards for Irish expenses and only use the State X credit cards abroad.

Distinction between income and capital

Income will be chargeable to Income Tax. Capital proceeds may be chargeable to Capital Gains Tax.

Income will retain its character as income even if subsequently reinvested.

Pre-arrival income

Remittances of pre-arrival income are, strictly, taxable in Ireland. However, by concession Revenue treat income earned pre-arrival by the following, as pre-arrival capital, are not subject to Irish tax:

- Individuals moving to Ireland for the first time or
- Irish citizens returning after a period after being neither resident nor ordinarily resident.

Gains on pre-arrival disposals will not be subject to Irish CGT.

Mixed funds

The above-mentioned treatment introduces the concept of a mixed fund. These arise where an account holding pre-arrival income and gains is also used to receive post-arrival income and gains.

Remittances from such funds are treated as coming in the following order:

- Post arrival income until exhausted *Scottish Provident v Allen*-4TC 209.
- Post-arrival disposal proceeds There is no legal basis for determining when the actual gain is remitted. Revenue treats the gain element as being remitted first.

This means that Irish tax arises on income and gains which were originally not taxable in Ireland.

Recommendation

Before arrival in Ireland, you should open set up separate bank accounts for post-arrival income and another for capital proceeds. Use these accounts for post-arrival receipts.

Take remittances firstly from the pre-arrival accounts.

Investment portfolio

Subject to investment advice you should consider selling and repurchasing your investment portfolio before being Irish resident. This will rebase your costs for Irish CGT and utilize foreign losses forward.

Principal Private residence

State X will have prior taxing rights on immoveable property.

There is an exemption from Irish CGT for the disposal of your principal private residence. Where it has not always been occupied as your PPR the relief applies for the following periods.

- The period of occupancy as PPR.
- The last 12 months of ownership, regardless of occupancy.

The remittance basis will apply to any disposal gains.

Proposed use of loan

The proposal to receive Irish funds through loan transfer while making repayments in X will not be effective. S72 (2) TCA 1997 taxes as remittances, the payment abroad of:

- Irish loans or
- Foreign loans brought into Ireland or
- Other loans related to the above.

Pension fund

Article 18 (1) of the MTC gives sole taxing rights to Ireland on pension income from past employment.

The foreign pension will be a “foreign possession” so the remittance basis can apply to payments.

Lump sum payment

In the past, lump sums from foreign pension schemes, unlike Irish schemes were taxable in Ireland with some concessions.

S200A TCA 1997 now allows the following treatment:

- Twenty-five percent of the pension fund, to a lifetime maximum of €250,000 is exempt.
- The excess up to the €500,000 is taxable at 20% under Schedule D Case III.
- Balance at the higher rate of tax under Schedule D Case III.

To qualify, the payment must be from a “foreign pension arrangement” defined by S 72 (1) TCA 1997 as:

- Established in another State, in this case X.
- For the sole purpose of providing retirement benefits.

The Revenue TDM specifically refers to payments made on or after retirement.

Your funds allow withdrawals before retirement. Therefore, they are not “solely” for the provision of retirement benefits as required.

The entire lump sum is exposed to Irish tax at your marginal rates.

Recommendation

Draw down the lump sum before becoming Irish resident.

Consultancy

A profession exercised in Ireland will not be a “foreign possession.” The remittance basis will not apply, even if all receipts arrive in X.

Yours faithfully
A Tax Consultant

Question 6

To: Mr B
22/2/2026

Re: Capital gains on proposed move to State S. Charge to CGT

Dear Mr B,

You have asked our advice on the tax aspects of your proposed share and property disposals related to your proposed move to reside in State S.

Based on the facts outlined, the position is as follows.

Charge to Irish CGT

An Irish resident or ordinary resident individual is chargeable to CGT on worldwide gains.

Ordinary residence

You remain ordinarily resident for a year unless you have been non-resident for three previous calendar tax years. If you become non-resident in 2027, you will remain ordinarily resident for 2027-2029 inclusive. Ordinary residence ceases for 2030.

Irish residence

Residence requires Irish presence for:

- 183 days in the tax year or
- 280 days aggregating the current and previous year.

Any year with less than 30 days presence is ignored.

On becoming non-resident, Mr B will remain ordinary resident for three years.

Non-residents are chargeable to CGT on gains from the disposal of specified assets i.e.:

- Land and buildings in the State
- Irish oil and mineral rights and related exploration rights.
- Shares deriving their assets from the above assets.

Treaty implications

Article 13 (1) and 13 (4) of the MTC give taxing rights to Ireland on the gains from Irish immovable property and shares deriving value from such property.

Your other disposals will be taxable only in the state of residence per Article 13 (4).

Residence position

Mr B will be Irish resident for 2027 based on the 280-day rule.

He would remain ordinary resident until 2031.

If he meets State S rules, he will be dual resident. The tiebreaker provisions of Article 4(1) will apply. Article 4(1)(a) gives residence to the state where there is a permanent home.

You need not own a home for it to be permanent. A long lease will suffice per the OECD Commentaries.

Similarly, a residence which is owned but unavailable for use will not qualify.

Recommendation

Therefore, you should sell your Irish property or rent it out on a long lease. Any lease should preclude any personal availability.

Ensure that any State S rental is long enough to give “permanence.”

Application to “ordinary residence”

Irish legislation applies CGT to ordinary residence. We must therefore consider if the tiebreaker can be used for ordinary residence.

Article 4 (1) defines a resident as any person who is resident is liable to tax therein by reason of his residence, place of domicile. Place of management or any other criterion of a similar nature.”

Ordinary residence is based on the original years of residence. Therefore, it is covered by the Art 4(1) definition of resident as any person.. liable to tax therein byb reason of his domicile,residence...or any criterion of a similar nature”

Reduced State S tax rate

Article 4(1) excludes from residence a person taxable in S only on S source income. This would prevent the use of the tiebreaker.to avoid Irish residence.

S imposes a reduced rate, so this exclusion does not apply.

Therefore, you can invoke the tiebreaker provisions of the treaty for disposals of:

- Shares in Company T
- Technology and pharmaceutical share portfolio as it contains no specified assets.
- Foreign investment properties. Gains would be taxable in the source state and S.

Disposals of shares in the property company will be taxable in Ireland as the derive their value from Irish land.

Loss on technology investment

While non-resident you can only use this loss against an Irish taxable gain. In this case, the loss would be available against disposals of Irish property assets as follows.

Investment properties

Irish investment properties remain chargeable to Irish tax per Article 13 (1)

Shares in property company

Ireland has taxing rights per Article 13 (4)

Loss on technology company

The technology company should be liquidated while resident to crystallize the gain. It will then be available for carry-forward against taxable gains.

Anti-avoidance on returning to Ireland

You consider the anti-avoidance provisions of S 29A on disposals by temporary non-residents.

This applies to his trading company shares as the holding exceeds 5%.

If you become non-resident for 2027 your year of departure will be 2026.

You will be deemed to have made the disposal in the year of departure, 2026 and be chargeable to Irish CGT in the year of return, if you:

- return to Irish residence within 5 years of departure
- sell your shares within the intervening 5 years.

I hope that this information is helpful and look forward to discussing further.

Yours faithfully
A Tax Consultant

Question 7Irish Transfer Pricing Rules — Royalty Arrangement with Brightfield Inc**Scope and Legislative Basis**

Legislative framework. Ireland's transfer pricing rules are contained in Part 35A TCA 1997, as substantially updated by Finance Act 2019. The rules require that arrangements between associated persons are priced on an arm's length basis, and they are interpreted by reference to the OECD Transfer Pricing Guidelines (as updated in 2017 and subsequently), which are incorporated into Irish law by statutory reference.

Associated persons. The rules apply to arrangements between persons where one is directly or indirectly participating in the management, control or capital of the other, or both are under common control. Luminos Plc and Brightfield Inc are associated for these purposes as Brightfield Inc is a wholly owned subsidiary of Luminos Plc following the 2022 acquisition.

Scope of transactions. The rules apply to trading transactions — arrangements entered in connection with a trade carried on by the Irish company. The royalty payments made by Luminos Plc to Brightfield Inc under the licence agreement are made in connection with Luminos Plc's trading operations and are therefore within scope. Finance Act 2019 extended the rules to apply to both domestic and cross-border transactions and to companies of all sizes, subject to the SME exemption discussed below.

The Arm's Length Standard

The Irish rules require that the arm's length principle applies to arrangements between associated persons. This means that the profits arising to Luminos Plc from its arrangement with Brightfield Inc must be the same as would arise if the arrangement had been made between independent persons dealing at arm's length in comparable circumstances.

The arm's length royalty rate should be determined by reference to an appropriate OECD-recognised transfer pricing method. For IP licence arrangements, the most applied methods are:

- **Comparable Uncontrolled Price (CUP):** where comparable licences between independent parties can be identified, the royalty rate under those comparable transactions is used as the arm's length benchmark.
- **Transactional Net Margin Method (TNMM):** where comparable licences are not available, the net profit margin of one of the parties (typically the licensee) is benchmarked against comparable independent companies.

The IRS's proposed adjustment implicitly challenges the method or comparables used to set the royalty rate at the time the licence agreement was entered into. Luminos Plc should review its original pricing analysis considering the IRS position.

Documentation Requirements

Finance Act 2019 introduced mandatory transfer pricing documentation requirements aligned with the OECD BEPS Action 13 two-tiered framework:

- **Master File:** a high-level overview of the Luminos group's business, organisational structure, value drivers, intercompany transactions and global transfer pricing policies.
- **Local File:** entity-specific documentation for Luminos Plc covering the royalty arrangement with Brightfield Inc, the transfer pricing methodology applied, the comparables analysis and the conclusion on arm's length pricing.

Documentation must be prepared and available by the time the Irish tax return is filed for the relevant accounting period. It does not need to be submitted with the return but must be provided to Revenue on request. Luminos Plc should ensure that its documentation for the periods during which royalties have been paid (from 2023) is complete and up to date, as Revenue may request it during any Irish enquiry triggered by the IRS adjustment.

SME Exemption

An exemption from the Irish transfer pricing rules applies to small and medium-sized enterprises (SMEs) as defined under EU criteria — broadly, fewer than 250 employees and either annual turnover not exceeding €50 million or a balance sheet total not exceeding €43 million. Given that Luminos Plc is an Irish publicly quoted company with an international IP portfolio and a USD 60 million acquisition, it is very unlikely to qualify as an SME. The exemption is not available and full compliance with the documentation and arm's length requirements is required.

Addressing the IRS Adjustment — Steps to Mitigate Double Taxation**The Double Taxation Risk**

Where a transfer pricing adjustment imposed by one tax authority increases the profits of one party to a transaction, economic double taxation arises if the other party does not secure a corresponding reduction in its taxable profits. In this case, the IRS's upward adjustment to Brightfield Inc's taxable income — reflecting a higher arm's length royalty — means that Luminos Plc's Irish deduction for royalties paid at the lower rate was, in the IRS's view, understated relative to the arm's length amount. Unless a corresponding adjustment is made in Ireland, Luminos Plc will effectively bear tax on profits that have already been taxed in the US.

It is important to note that Irish taxpayers cannot unilaterally amend a tax return to claim relief arising from a transfer pricing adjustment, nor can correlative relief be taken automatically. Relief must be formally claimed through Ireland's international agreements, and a revised Irish assessment will only issue once the competent authorities have agreed the quantum of relief in writing.

Available Mechanisms

Correlative Relief under Article 9 of the Ireland–US DTA. The Ireland–United States double tax agreement contains a provision equivalent to Article 9(2) of the OECD Model Convention, which requires the other contracting state to make a corresponding adjustment where a transfer pricing adjustment has been made in the first state and the amount of profit included is one that would have accrued to an enterprise of that first state if the conditions between the two enterprises had been those that would have been made between independent enterprises. Luminos Plc should request that Irish Revenue, as Ireland's Competent Authority (CA), consider a correlative adjustment to Luminos Plc's Irish taxable profits to reflect the higher royalty accepted or assessed by the IRS. This is the primary route to relief.

Mutual Agreement Procedure (MAP). All of Ireland's DTAs contain a Mutual Agreement Procedure (MAP) article, equivalent to Article 25 of the OECD Model Convention. Under MAP, the competent authorities of Ireland and the United States engage directly to resolve the double taxation arising from the IRS adjustment. Luminos Plc should present its case to Irish Revenue as Ireland's CA, requesting that MAP be initiated with the IRS.

Luminos Plc is not a party to the CA-to-CA discussions and there is no absolute guarantee that the competent authorities will fully eliminate double taxation, but this is the usual outcome. The MAP process can take several years to conclude, and Luminos Plc should continue to monitor its Irish tax position throughout.

Information Required to Support the Claim

In presenting its case to Irish Revenue, Luminos Plc will need to provide:

- The legal basis for the claim, including the relevant articles of the Ireland-US DTA and confirmation of why the Ireland-US agreement is the applicable DTA.
- Evidence of how Luminos Plc and Brightfield Inc are associated.
- A copy of the transfer pricing documentation supporting the royalty rate at the time of the licence agreement, including any transfer pricing study, economist report or expert advice.
- Details of the elements of the pricing policy that the IRS did not accept and the basis of the IRS position.
- In due course, once the US process has concluded: details of how agreement with the IRS was reached; the quantum and accounting periods covered by the adjustment; a copy of any settlement agreement; an account of any decision to accept a negotiated settlement rather than litigate; and details of whether other tax authorities are conducting similar enquiries affecting Brightfield Inc or other Luminos group entities.

Items Excluded from Relief

No correlative or MAP relief is available in respect of:

- Interest and penalties imposed by the IRS — relief is limited to the primary tax adjustment only.
- Secondary or repatriation adjustments implemented under US domestic tax law.
- Non-deductible payments of a capital nature.

Time Limits

MAP claims are subject to time limits under the Ireland–US DTA — generally three years from the first notification of the action giving rise to double taxation. The IRS Notice of Proposed Adjustment constitutes such notification and the three-year period is therefore already running. Luminos Plc should contact Irish Revenue promptly to preserve its ability to make a MAP claim.

Question 8

Three cases are to be identified, the CJEU findings summarised and the resulting change to Irish tax legislation described. The following are examples of cases candidates may refer to. Candidates are not limited to these cases and credit will be given for any valid case that satisfies the three elements of the requirement.

Case I — Marks and Spencer C-446/03 — Freedom of Establishment — Group Relief for Losses

Treaty freedom engaged: freedom of establishment (Article 49 TFEU).

The case concerned the UK group relief rules, which permitted loss relief between UK-resident group companies but did not allow an Irish-resident parent to claim relief for losses incurred by its UK-resident subsidiaries. The UK argued the restriction was justified by the need to preserve the balanced allocation of taxing rights between member states and to prevent losses being used twice.

The CJEU accepted that the restriction was in principle justified on those grounds but held that it went further than necessary to achieve those objectives. Specifically, the Court held that the restriction should not apply in circumstances where the non-resident subsidiary had exhausted all possibilities of using the losses in its own state of residence and there was no possibility of those losses being utilised in that state in the future — the so-called "Marks and Spencer exception" or "no possibilities" test.

Ireland introduced section 420C TCA 1997 because of this decision. Section 420C provides that an Irish-resident company may claim group relief for losses surrendered by an EU-resident group company where the loss is of a kind that would generally be available for offset under Irish tax rules, is calculated in accordance with the rules of the member state of the surrendering company, and is a trapped loss that cannot be used in the member state of the surrendering company either in the current period, in a prior period by way of a carry-back, or in a future period.

Case II — FII GLO C-446/04 — Freedom of Establishment / Free Movement of Capital — Taxation of Foreign Dividends

Treaty freedom engaged: freedom of establishment (Article 49 TFEU) and free movement of capital (Article 63 TFEU).

This case concerned the UK's treatment of dividends received by a UK-resident company from its subsidiaries. Dividends from UK subsidiaries were exempt from UK corporation tax, while dividends from EU-resident subsidiaries were subject to UK corporation tax with a credit for underlying foreign tax. The UK argued that the two systems — exemption for domestic dividends and credit for foreign dividends — were consistent with EU law because both systems prevented economic double taxation.

The CJEU held that there was in principle nothing to prevent a member state from applying an exemption system to domestically sourced dividends and a credit system to foreign sourced dividends, provided both methods achieved the same result of preventing economic double taxation. However, the credit system was only acceptable where the rate of tax imposed on the foreign-sourced dividends was not higher than the rate applicable to the equivalent domestic dividends. A credit system that resulted in a higher effective tax burden on foreign dividends than on domestic dividends would constitute a restriction on the relevant Treaty freedom.

This created a direct problem in Ireland because Irish-sourced dividends were taxed at 12.5% while foreign dividends were taxed at 25%, meaning the Irish credit system resulted in a materially higher burden on foreign dividends than on domestic ones. Section 21B TCA 1997 was introduced to address this by providing for a 12.5% rate of corporation tax on dividends received from EU and treaty-partner subsidiaries engaged in trading activities, subject to certain conditions being met.

Case III — FII GLO C-35/11 — Freedom of Establishment / Free Movement of Capital — Additional Nominal Rate Credit

Treaty freedom engaged: freedom of establishment (Article 49 TFEU) and free movement of capital (Article 63 TFEU).

This was a follow-on reference in the same FII GLO litigation. Following the introduction of s.21B, the UK court referred further questions to the CJEU about whether the credit system, even as modified, remained contrary to EU law. The CJEU held that a credit system for foreign dividends is contrary to EU law where it is established that the tax credit entitlement is based on the amount of foreign tax actually paid on the underlying profits (the effective rate) and the effective level of taxation in the member state is generally lower than the prescribed nominal rate of tax. In those circumstances, restricting the credit to the effective foreign tax actually paid, rather than the nominal rate, would result in residual double taxation of foreign dividends not suffered by domestic dividends.

The CJEU indicated that one permissible solution was for member states to grant an additional credit by reference to the foreign nominal rate rather than the effective rate actually paid.

Schedule 24 paragraph 9I TCA 1997 was introduced because of this ruling. It provides for an additional foreign tax credit on dividends received from EU or EEA countries with which Ireland has a double tax agreement, calculated by reference to the nominal rate of tax in the foreign jurisdiction rather than the effective rate of tax actually paid on the underlying profits.

Case IV — National Grid Indus C-371/10 — Freedom of Establishment — Exit Taxation on Company Migration

Treaty freedom engaged: freedom of establishment (Article 49 TFEU).

This case concerned the imposition of an exit tax under Dutch domestic law on the migration of a company's tax residence from the Netherlands to the United Kingdom. On migration, Dutch law imposed an immediate charge on unrealised gains in assets held by the company at the date of migration, including a currency gain on a sterling-denominated receivable owed to a UK group company. The taxpayer argued that the immediate imposition of exit tax constituted a disproportionate restriction on freedom of establishment.

The CJEU held that exit taxes as a concept were justified by the need to preserve the balanced allocation of taxing rights between member states — a member state is entitled to tax gains that accrued within its jurisdiction before a company migrates. However, the Court held that immediate collection of the tax on the date of migration was disproportionate because it placed the migrating company at a disadvantage compared with companies that reorganise within the same member state, which do not face an immediate cash tax cost on unrealised gains. The Court indicated that two approaches were compatible with EU law: either immediate payment with interest relief on the disadvantage, or deferral of payment until the asset is realised.

Ireland's exit tax provisions were updated by Finance Act 2018 to comply with this ruling and with the ATAD requirements, introducing section 627A TCA 1997. Where a company migrates its tax residence to another EU or EEA member state, the company may elect to pay the exit tax in five equal annual instalments rather than as a lump sum on the date of migration. Interest accrues on the deferred amounts. Where the company migrates to a non-EU/EEA state, no deferral option is available, and the tax is payable immediately.

Case V — European Commission v United Kingdom C-112/14 — Free Movement of Capital — Attribution of Gains of Non-Resident Close Companies

Treaty freedom engaged: free movement of capital (Article 63 TFEU).

This case arose from infringement proceedings brought by the European Commission against the United Kingdom in respect of the UK equivalent of section 590 TCA 1997. Section 590 provides that where a non-resident close company realises a chargeable gain, Irish Revenue may attribute that gain to Irish-resident participators and subject it to Irish capital gains tax in their hands, even where those participators have not received any actual distribution or other benefit from the company. The European Commission argued that the equivalent UK provision was incompatible with the free movement of capital because it targeted not only wholly artificial arrangements but extended to arrangements carried out for genuine commercial purposes.

Before the CJEU issued its ruling, the UK conceded the point and amended its legislation, acknowledging that the previous version was incompatible with EU law. The CJEU proceedings against the UK were therefore discontinued. Ireland nonetheless amended section 590 TCA 1997 in Finance Act 2015 considering this development. The amended provision now only applies where the transaction giving rise to the gain is not carried out for bona fide commercial reasons and forms part of an arrangement the purpose, or one of the main purposes, of which is the avoidance of Irish tax. This brings section 590 into line with the standard Irish anti-avoidance approach and ensures the provision is proportionate under EU law.