Answer-to-Question-_1_

Part A - Question 1

To: Red Box Inc.
From: Irish Professional Advisors
Subject: Ireland as a Holding Company ("HoldCo") Location

When considering a possible location to incorporate an international headquarters, consideration should certainly be given to Ireland. The main advantages and disadvantages of Ireland as a HoldCo location can be summarised as follows:

Advantages:
- No capital duty on the issue of shares
- Ability to distribute profits gross of withholding tax ("WHT")
- Transfer Pricing ("TP") is limited to trading transactions
- Participation Exemption under s626b TCA 1997 enabling tax free disposal of shares in subsidiaries (subject to certain conditions being met)
- Interest deduction available for borrowing's used to purchase shares in subsidiaries (s247 TCA 1997)
- Wide Double Tax Agreement ("DTA") network
- Membership to the EU
- Onshoring pooling of foreign tax credits
- Inbound dividends taxable at either 12.5% or 25% (subject to election)
- Ability to pay interest without deduction of WHT in majority of cases (domestic exemptions, DTA exemptions, and EU directive exemptions)

Disadvantages:
- No general participation exemption on dividend income
- Complex rules around s247 interest deductions
- Complexity and administrative burden around dividend withholding tax ("DWT") exemptions

- Introduction of thin capitalisation and controlled foreign company ("CFC") rules as part of the EU Anti Tax Avoidance Directive ("ATAD")

While there are of course some drawbacks to Ireland as a potential location for setting up a HoldCo, it can be seen from above that the benefits far outweigh the disadvantages.

The Irish HoldCo, in its capacity as the holding company of the group, will have trading subsidiaries underneath it. Ireland operates a worldwide tax system, meaning Irish resident companies are taxable on their worldwide income, regardless of where it is generation, with relief available for tax suffered in foreign jurisdictions (such relief cannot exclude the Irish tax which would have been payable on the same income). Ireland has a wide DTA network, which enables relief from double taxation through Article 23. Ireland has two corporate tax rates; the trading rate (12.5%) and the passive rate (25%). Where the group has trading subsidiaries in Ireland, and they can adequately demonstrate to Irish Revenue that they are trading (the Badges of Trade and the Noddy Case refer), then those subsidiaries will be taxed as 12.5% - the lowest corporation tax rate among OECD member countries. The HoldCo, by its nature, will not be trading and any dividend income received will be considered passive income and taxable at 25%.

In respect of capital gains, Irish capital gains tax is charged at a rate of 33%. The participation exemption in s626b TCA 1997 allows for the HoldCo to dispose of its shareholding in a subsidiary company without giving rise to capital gains tax (subject to certain conditions being met). This relief is automatic, and there is no requirement for application to Irish Revenue. Capital gains tax will also arise on the disposal of Irish specified assets (land, minerals, etc.) regardless of the residency status of the company disposing of such assets. It should also be noted that under Irish tax legislation, companies can form capital gains tax "groups" whereby assets can transfer at no gain/no loss between group members, subject to claw back provisions if a group member leaves the group or the asset is sold outside the group within a ten year period. Under ATAD, Ireland was required to implement an Exit Tax regime. While we previously had a limited form of exit tax, there were many ways to avoid coming within the charge to same, and so a new exit tax regime was introduced following the announcement of the budget in

October 2018. The new exit tax regime generally applies where a company or PE migrates tax residency outside of Ireland. Before its introduction, there was much concern from taxpayers and multinational enterprises ("MNEs") about the rate of tax that would apply to any uplift in value of assets on migration from Ireland - the capital gains tax rate of 33% or the trading tax rate of 12.5%. The introduction of the 12.5% trading rate as the exit tax rate was welcomed by tax payers and MNEs following its introduction.

If the Irish HoldCo were to repatriate income, the most common way to do so would be by way of a dividend. A dividend payment is not a deductible expense for Irish corporation tax purposes. As a general rule, the company would be required to withhold DWT at the standard rate of 20% before making the dividend payment. However, there are a number of ways to mitigate this withholding tax requirement. As the payment would be made to the US, there is no scope to rely on the EU Parent Subsidiary Directive. As such, we would need to look to either domestic legislation or the DTA. The DTA between Ireland and the US (assuming this is based on the 2017 OECD Model Tax Convention ("MTC")) would reduce the amount of withholding tax to 5% where being paid to a beneficial owner holding at least 25% of the share capital of the company for a 365 day period including the date of payment (or 15% in all other cases). However, under domestic legislation contained in s172D TCA 1997 it should be possible to apply no DWT to the dividend payment on the basis that the US parent company would be considered a non-resident person. A declaration is required to be put in place before the payment of the dividend, and a nil DWT return should be filed by the 14th day of the month following the month of the distribution. The US parent would be required to pay income tax at the standard rate (20%) on the dividend received, unless it can satisfy Irish Revenue that it would be considered a "qualifying non-resident".

The OECD BEPS project came about in response to the actions of MNEs using aggressive tax planning strategies to funnel profits to low/no tax jurisdictions in order to minimise their global tax bill. The overarching aim of the BEPS project has been to align profits with value creation, counter actions of tax avoidance, and increase transparency. As a result of the work of the OECD, an action plan of 15 points was released, dealing with various areas of contention in the international tax field. Such areas include digital taxation, hybrid mismatches, harmful tax competition, dispute resolution, transfer pricing risk, and a revised definition of permanent establishment ("PE"). The EU went on to develop the ATAD, which took three of the BEPS action points and two further ones - anti avoidance and exit tax. The purpose of the ATAD was to take what the EU considered to be "the best of BEPS" and enforce it across EU member states. In respect of Red Box Inc., the main changes to Ireland's corporate tax landscape as a result of BEPS and ATAD which could affect the attractiveness of Ireland as a HoldCo location are:

- introduction of thin capitalisation rules, where excess interest over a 30% debt:EBITDA ration will be disallowed as a corporate tax deduction. It should be noted that Ireland has made a derogation in respect of this, on the basis that current domestic rules are sufficient to achieve the same purpose as set out by the ATAD guidance on thin capitalisation. We are awaiting response as to whether or not this derogation as been successful, and if it is, we do not anticipate thin capitalisation rules until 1 January 2024

- Introduction of new exit tax rules (as discussed above)

- Introduction of CFC rules from 1 January 2019, which will attribute income directly to shareholders of a company where it can be shown that those shareholders in fact control the operations of the Irish entity, which was set up for the purposes of avoiding a charge to tax. It should be noted that there are a number of conditions, exceptions and exemptions to the new CFC rules which should be given consideration.

- Mandatory Disclosure Regime ("MDR") - the new MDR requires taxpayers and their advisors to disclose details of any transactions which are undertaken solely for the purposes of avoiding a charge to tax

- Ireland is currently in the process of a consultation on transfer pricing rules. Following an independent review by economist Seamus Coffey, and a consultation process open to the public, it is expected that Ireland will legislation for the 2017 OECD transfer pricing guidelines ("TPG) from 1 January 2020. Consideration is being given as to whether TP rules should be extending to non-trading transactions, small/medium enterprises, capital transactions, and previously grandfathered transactions.

- the introduction of country by country reporting ("CbCR") and automatic exchange of information is a cornerstone in the move towards global transparency, and allows tax authorities oversight on the profit, economic activities, and cash taxes paid by MNEs across the world.

The international tax landscape is ever-evolving, and the move towards transparency and equity does not look set to slow down. While there are of course considerable changes potentially coming down the line, this can be said to be true of all jurisdictions, but should not hinder the competitiveness of Ireland as a potential HoldCo location.

--------------ANSWER-1-ABOVE---------------

---------DO-NOT-EDIT-THIS-DIVIDER----------

--------------ANSWER-2-BELOW---------------

Answer-to-Question-_2_

Part A - Question 2 (part 1)

When considering the potential tax issues of someone moving to or from Ireland, there are three key concepts which require discussion: Residence, Ordinary Residence, and Domicile.

Residence
A person can be said to be resident in Ireland when they spend greater than 183 days in

the country, or greater than 280 days across a two year period (with a minimum of 30 days spent in Ireland in each year). An Irish resident individual is taxable on Irish source income, and potentially worldwide income depending on their domicile (discussed further below). A person can be resident in more than one state, and where this is the case, the relevant DTA must be looked to. The DTA provides a tie-breaker clause to determine residence for the purposes of allocating taxing rights.

Francie and Karen will become Irish resident in the first year in which they spend 183 days in Ireland.

Ordinary Residence

Ordinary residence is essentially habitual residence. A person becomes ordinarily resident in Ireland following the conclusion of three full years being resident. A person will not lose this ordinary residence status until the fourth year following three non-consecutive years of non-residence. It should be noted that Irish domestic legislation contains specific anti-avoidance provisions around temporary non-residents who make disposals of shares while non-resident in order to avoid a charge to Irish tax.

Domicile

Domicile is not defined in legislation, and is usually a concept more enshrined in case law. A person is domiciled at birth in the same jurisdiction as their father (where the parents are married). If the parents adopt a Domicile of Choice before the child turns 18, the child will also adopt that domicile. After turning 18, a person can choose their own domicile, however it is difficult to adequately demonstrate that you have shed one domicile in favour of another. This normally requires cutting all ties with the first country. It is not clear from the information provided whether Francie adopted a domicile of choice in the UK when he moved there in 1976 (presuming he had an Irish domicile on the basis of being born here). However, his intention to return to Ireland following his retirement indicates that this is likely not the case. For the purposes of this analysis, we will assume Francie is Irish domiciled. Karen was born to British parents, liver all her life in the UK, and intends to continue to spend time in London. From this, it is clear that she is UK domiciled and does not appear to have any intention of adopting an Irish domicile of choice.

Application to the Fact Pattern
When Francie and Karen move to Ireland, they will become resident following the passing of 183 days in the country. Francie, who is Irish domiciled, will be chargeable to Irish tax on his worldwide income and gains. Karen, as a non-domiciled individual, will only ever be chargeable to Irish tax on Irish source income, foreign income to the extent it is remitted to Ireland, and certain gains.

As such, there is scope for potential tax planning to mitigate certain charges to Irish tax before the couple move. If Francie intends to pass his business to Gareth, he should do so before becoming resident in Ireland. CAT would apply on the transfer to Gareth if it was made at a time where Francie was Irish resident. Alternatively, Francie could pass the holding to Karen (and take advantage of the spousal exemption). Karen could then pass the holding to Gareth. This would give more time for the transaction to take place, as there is a specific provision for non-domiciled individuals in relation to CAT whereby they won't become resident for CAT purposes until the expiration of five years.

In relation to the investment properties, if these are held jointly, Francie will be liable to Irish tax on this rental income under Case III (with a credit for any foreign tax suffered). Case III foreign rental income is treated similar to Case V Irish rental income in that certain deductions are allowable. Capital allowances can be claimed on any fixtures and fittings, but industrial buildings allowance is not available on foreign property. Case III loses can be set off against gains from other foreign rental profits, but cannot be offset against Irish rental profits under Case V or any other profits under Case III. Karen should not be chargeable to Irish tax on the rental income where it is not repatriated into Ireland. Again, Francie could transfer his share of the property to Karen and allow the rental income to accrue in the UK. Where it is not repatriated by Karen, no charge to Irish tax should arise.

Part A - Question 2 (part 2)

As Irish residents, there are a number of ongoing tax issues which will need to be addressed by Francie and Karen, although some of them will be contingent on whether any of the potential planning advice above is undertaken.

Where Francie has income coming in from his 20% shareholding in the business and also his rental income, he will be a chargeable person for Irish tax purposes and will be required to file a tax return each year with Irish Revenue.

Consideration should also be given as to how the remaining 20% of the business will pass to Gareth. If Francie intends to do this while alive, consideration should be given as to whether he may qualify for retirement relief from capital gains tax, and also whether Gareth may qualify for capital acquisitions tax ("CAT") business relief. If Francie passes the shareholding to Gareth on death, only CAT will apply, as capital gains tax and stamp duty do not apply to inheritances.

Karen may have a requirement to file an income tax return to the extent she earns Irish sourced income, or repatriates her foreign income from her shareholding in the football club or the rental properties.

--------------ANSWER-2-ABOVE---------------

---------DO-NOT-EDIT-THIS-DIVIDER----------

--------------ANSWER-3-BELOW---------------

Answer-to-Question-_3_

Part B - Question 3 (part 1)

Finance Act 2014 ("FA14") introduced significant changes to Irish residency rules. In order to appreciate the impact of the changes, it is important to understand how residency was determined pre-FA14.

Prior to the amendments introduced in FA14, Irish companies incorporated in the State were considered Irish tax resident, unless they met one of two exemptions, namely the "trading" exemption and the "treaty" exemption. The treaty exemption stated that a company incorporated in the State would be tax resident here unless it was tax resident in another state by virtue of a DTA. The trading exemption provided that a company that carried on a trade in the state or was related to a company carrying on a trade in the state would not be considered Irish tax resident and would instead be considered tax resident in the place where its central management and control resided. This provided a huge loophole for MNEs to engage in what became known as the "double Irish structure" whereby they would incorporate two Irish entities, one with minimal Irish trade, and the other centrally managed and controlled in a tax haven (e.g. Bermuda), meaning profits accrued offshore and were subject to no tax - i.e. stateless companies.

MNEs received a lot of negative press for engaging in this type of aggressive tax planning and diverting profits offshore. In FA14, amendments were introduced (s23A, TCA 1997) to the residency rules. Under s23A, companies incorporated in Ireland after 1 January 2015 are considered Irish tax resident unless resident in another state with which Ireland has a DTA. Companies centrally managed and controlled in Ireland, but incorporated elsewhere, would also be considered Irish tax resident. For companies incorporated pre 1 January 2015, FA14 introduced grandfathering provisions to allow those companies to restructure their affairs. Companies incorporated pre 1 January 2015 could continue to use the "old" residency rules until the earlier of 1) a change in ownership combined with a major change in the nature of the trade, or 2) 1 January 2021. While a very contentious issue at the time, this is once again coming to the forefront of international tax issues as 1 January 2021 is fast approaching.

On the basis that BHIH was incorporated in 2012, it would have fallen under the "old" residency rules, meaning even though it was incorporated in Ireland it would not have been considered resident here on the basis that it was related to Blue OpCo and was centrally managed and controlled elsewhere. BHIH would therefore have been considered tax resident in Bermuda. Central management and control is a test of determining where the strategic decision making of the business is taking place, and the place where the board of directors meet is often a strong indication of where the central management and control sits. Assuming there was not a change in ownership coupled with a major change in the nature of the trade in recent years, it is likely that BHIH has been relying on the grandfathering provisions in Irish tax legislation in order to protect their Bermudan residency.

However, consideration will now have to be given to the impending deadline of 1 January 2021, at which stage BHIH will be considered Irish tax resident (unless it migrates tax residency to another jurisdiction with which Ireland has a DTA). This will have wide reaching effects for the company, in terms of profits accruing to Ireland, the scope of Irish corporation tax on same, potential transfer pricing issues, etc. The Department of Finance and Irish Revenue have indicated they have little sympathy for these MNEs, who have been given a more than generous lead in time to get their tax affairs in order.

Part B - Question 3 (part 2)

In the first instance, consideration will have to be given as to whether BHIH intends to become Irish tax resident, or resident in another jurisdiction with which Ireland has a DTA.

The shift in the global tax landscape as a result of BEPS has seen many MNEs decide to move their IP companies from offshore into Ireland, as Ireland has a very impressive IP regime, so for the purposes of this analysis we will assume there is no intention for BHIH to migrate tax residency to a jurisdiction outside of Ireland.

The key features of Ireland's IP regime are as follows:

- low corporation tax on profits arising from IP trade
- generous research and development tax credit
- OECD compliance knowledge development box with a tax rate of 6.25% for qualifying activities
- s291a capital allowances on IP (subject to 80% cap)
- interest deductions on the cost of acquiring IP (subject to 80% cap)
- WHT exemptions on royalty payments and inbound/outbound dividends
- TP limited to trading transactions

BHIH should move its central management and control functions to Ireland prior to the end of 2020. This would involve holding directors meetings in Ireland, making all important decisions relating to the Irish business at these meetings, ensuring the books of account and company seal are maintained in Ireland, etc.

In order for BHIH to be considered trading for Irish tax purposes, and therefore taxed at 12.5% on the royalty income, it should be actively engaged in an IP trade. This can usually be demonstrated through having office space in Ireland, employing people with the requisite skills, undertaking R&D, actively engaging with new and existing customers, and generally taking on risks commensurate to the rewards expected to be generated. Where the company is considered to be engaged in an IP trade, profits will be taxed at 12.5% and s291a capital allowances should be available as a deduction for the cost of the IP held on the balance sheet. Consideration should be given to the valuation method used when looking at what the IP is held at on the balance sheet.

Consideration also needs to be given to the royalty payment between Blue OpCo and BHIH. Transactions between associated enterprises should be made at arm's length, in line with transfer pricing guidelines. A benchmarking study should be undertaken to determine a range of acceptable prices to support the royalty rate being applied to the transaction. However, as BHIH will be Irish tax resident, and the transaction will be wholly domestic, the risk of an adjustment by the Irish competent authority is low.

Prior to the end of the residency grandfathering, it is expected that Ireland will legislated for the 2017 OECD TPG to come into effect from 1 January 2020. The 2017 TPG introduce the concept of DEMPE - Development, Enhancement, Maintenance, Protection and Exploitation - in relation to IP. Essentially, companies needs to be able to demonstrate DEMPE and control of (and capacity to consume) risk in order to be entitled to residual IP profit. If BHIH simply held the IP, it would be entitled to no more than a risk-adjusted rate of return. Furthermore, if BHIH engaged in some DEMPE functions, but not all, the residual profit would need to be allocated across the various entities performing the DEMPE functions in order to align profits with value creation. This is particularly contentious in respect of the CSA (which is an OECD term), as there is some mismatch between CSA's and CCAs (the US term), particularly in respect of demonstrating and assuming control of risk. Advice should also be sought on the implications of the recent Altera decision from the Ninth circuit, in the event this may impact on the CSA/CCA.

In terms of the upcoming end to the Irish residency grandfather, the main steps for BHIH in terms of reorganisation involve migrating tax residence back to Ireland and being adequately able to demonstrate central management and control in Ireland. The company needs to also demonstrate it is involved in a trade, performs DEMPE functions, controls and has capacity to consume risk, and is therefore entitled to any residual IP profit.

--------------ANSWER-3-ABOVE---------------

---------DO-NOT-EDIT-THIS-DIVIDER----------

--------------ANSWER-7-BELOW---------------

Answer-to-Question-_7_

Part C - Question 7

Global mobility is a cornerstone of the EU freedoms, and is becoming more and more relevant in an international tax context. Employees need the freedom to be able to work globally without tax becoming a barrier. The DTAs provide guidance in terms of determining taxing rights in relation to employees.

An employee will be considered resident in Ireland, and therefore subject to Irish tax, after 183 days. Other jurisdictions likely have similar rules around residence and the charge to tax for resident and non-resident employees. Furthermore, due to these conflicting residency rules across various states, it is impossible (and likely) that an individual may be tax resident in more than one state - resulting in potential double tax. When this situation arises, the DTA is the first port of call in determining residence (and therefore taxing rights).

Article 4 of the OECD MTC deals with the concept of residence, and provides a tie breaker when an individual is resident in both states. This tie-breaker is a step by step approach, meaning you look to each step individually and keep moving down the chain until an answer is reached. The various parts of the tie-breaker are as follows:

1. Permanent Home - in which of the two states does the individual have a permanent home available to her?

2. Vital Interests - if a permanent home is available in both states, in which state do her personal and economic relations lie?

3. Habitual Abode - if the centre of vital interests cannot be determined, the state in which her habitual abode lies will be the state of residence.

4. Nationality - if habitual abode exists in both or neither states, the state of which she is a national is the state of residence.

5. Mutual Agreement - if the taxpayer is not a national of either state, the competent authorities will determine residence by way of mutual agreement.

In respect of employment income, this is governed by Article 15 of the MTC which states that salaries, wages etc. derived by a resident of a contracting state shall be taxable only in that state unless the employment is exercised in the other state, in which case it can be taxed in the other state. Article 15 goes on to clarify that employment income generated in the other state (of non-residence) will not be taxable in that other state if the taxpayer is present for less than 183 days, the cost is not borne by an employer resident in the other state, and the cost is not borne by a PE in the other state. Where taxpayers suffer double tax, the DTA is also the go-to method for relieving that double tax, usually by way of credit.

As well as relying on the tax treaty network, Ireland has a number of domestic provisions which ease the burden for mobile workers, such as cross border relief (usually for those working in the UK/Northern Ireland), SARP, the Foreign Earnings Deduction, etc.

Going forward, as employees become increasingly global, it is imperative that international tax law and the DTA network continue to keep pace and ensure tax does not become a barrier to employment opportunity.

--------------ANSWER-7-ABOVE---------------

---------DO-NOT-EDIT-THIS-DIVIDER----------

--------------ANSWER-8-BELOW--------------

Answer-to-Question-_8_

Part C - Question 8 (Part 1)

When a non-resident individual acquires property in Ireland, they become a chargeable person for Irish tax purposes and are required to pay tax on the rental income generated from that property. There are differences when such property is acquired by a non-resident company, versus a non-resident individual, but for the purposes of this analysis we will not look at the corporate tax implications any further. Rental profit will form part of an individuals taxable income, subject to tax under Case V (s75, TCA 1997). For the purposes of a Case V assessment, individuals are able to claim deductions for qualifying expenditure relating to the premises in order to get to the adjusted rental profit chargeable to tax (such deductions are set out in s97, TCA 1997 and include items relating to repairs, maintenance, etc.). Furthermore, s97 sets out rental expenses that are specifically disallowable in computing taxable rental profit under Case V, and consideration should also be given to mortgage interest restriction.

Stamp duty applies on the purchase of investment property, and the current rate is 6%. This is applied to the value of the property. There would be no relief available in respect of this stamp duty.

A disposal of an investment property situated in Ireland would be considered a capital disposal for capital gains tax purposes, and the sales proceeds less the purchase price would be chargeable to tax at 33%. Stamp duty would likely also apply on the sale, but this would be the responsibility of the purchaser.

A non-resident individual in receipt of Irish rental income would be required to submit an annual tax return to Irish revenue and pay over any tax due via Revenue's Online Service. Preliminary tax obligations should also be considered.

Part C - Question 8 (Part 2)

Where an Irish tenant pays rent to a non-resident landlord, there is a requirement to withhold 20% of the payment under s1040, TCA 1997. This tax is creditable against the final tax liability arising on the rental income in that year. The tenant is responsible for withholding this amount and paying it over to revenue.

Should the non-resident landlord appoint an Irish resident agent to collect the rental income, there would be no requirement for the tenant to withhold the 20% tax and pay this over to Irish Revenue.