

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2025

MODULE 2.06 – IRELAND OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Holding Company

The strengths and weaknesses of Ireland as a holding company location are set out below.

Candidates are expected to summarise the main features from a tax perspective of Ireland as a holding company location including the below listed points. Other valid points, to the extent relevant, which are not included below will also earn marks.

There is no capital contribution tax in Ireland.

The corporate income tax rate is 12.5% on trading income and 25% on passive income. However, certain trading dividends from foreign subsidiaries located in an EU member state or in a country with which Ireland has a double tax agreement or in a country which has ratified the Convention on Mutual Assistance in Tax Matters or whose principal class of shares (or the shares of a 75% parent company) is traded on a recognised stock exchange are taxed at 12.5%.

The Pillar Two framework, introduced by the OECD, establishes a global minimum corporate tax rate of 15% for multinational enterprises (MNEs) with annual consolidated revenues exceeding €750 million. In Ireland, this means that only MNEs surpassing this revenue threshold will be subject to the top-up tax to ensure their effective tax rate meets the 15% minimum. It is notable that domestic companies and smaller MNEs with revenues below €750 million are not affected by this top-up tax and will continue to benefit

Dividend regime

Up to 31st December 2024 Ireland operates a 'credit' system as opposed to a participation exemption, which is seen by many as a weakness. The law provides for a system of onshore pooling of tax credits to deal with the situation where foreign tax on dividends exceeds the Irish tax payable (being either at the 12.5% or 25% rate). Foreign tax includes any withholding tax imposed by the source jurisdiction on the dividend itself as well as an amount of underlying foreign tax. The onshore pooling system enables companies to mix the credits for foreign tax on different dividend streams to calculating the overall credit. Dividends that are taxed at 12.5% are pooled separately to dividends that are taxed at 25%. Thus, any excess 'credit' on one dividend may be credited against the tax payable on another dividend received in the accounting period within each pool.

Foreign underlying tax includes corporation tax levied at state and municipal level and withholding tax. In this respect, it is possible to look through any number of tiers of subsidiaries.

An additional credit is available where the credit calculated under Ireland's existing rules is less than the amount of credit that would be computed by reference to the nominal rate of tax in the EEA country from which the dividend is paid. This additional national credit is capped at the lower of the nominal rate of foreign CIT or the Irish rate of corporate tax on the foreign dividend (i.e. 12.5% or 25%).

Where the relevant rate of taxation on dividends received in Ireland is 12.5% or 25% to the extent that credits received for foreign tax equal or exceed the applicable Irish rate of 12.5% or 25%, then there will be no tax payable in Ireland.

Unused credits can be carried forward indefinitely and offset similarly in subsequent accounting periods. The credit system applies where the Irish holding company holds a 5 shareholding in the relevant subsidiary. These provisions apply to dividends received from all countries.

Apart from the above, discussed credit system, dividends received by a portfolio investor which form part of such investor's trading income are exempt from Irish corporation tax. Portfolio investors are companies which hold not more than 5% of the share capital (either directly or together with a connected person) and not more than 5% of the voting rights of the dividend paying company.

Gains on shares:

The disposal of shares in a subsidiary company (referred to in the law as the 'investee') by an Irish holding company (referred to in law as the 'investor') is exempt from Irish capital gains tax in certain circumstances. An equivalent exemption applies to the disposal of assets related to shares, which include options and securities convertible into shares.

The exemption is subject to the following conditions:

- the investor must directly or indirectly hold at least 5% of the investee's ordinary share capital, be beneficially entitled to not less than 5% of the profits available for distribution to equity holders of the investee company and be beneficially entitled to not less than 5% of the assets of the investee company available for distribution to equity holders. Shareholdings held by other companies which are in a 51% group with the investor company may be taken into account;
- the shareholding must be held for a continuous period of at least twelve months in the 2 years prior to the disposal;
- the business of the investee must consist wholly or mainly of the carrying on of a trade or trades or alternatively, the test may be satisfied on a group basis where the business of the investor company, its 5% subsidiaries and the investee (i.e. the Irish holding company and its subsidiaries) when taken together consist wholly or mainly of the carrying on of a trade or trades; and
- the investee company must be a qualifying company. A qualifying company is one that: (a) does not derive the greater part of its value from Irish land/ buildings, minerals, mining and exploration rights; and (b) (ii) is resident in the EU (including Ireland) or in a double taxation treaty partner jurisdiction.

Non-resident capital gains taxation

Gains realised by non-residents on the disposal of shares in an Irish company are not taxable, except when the shares in the Irish company derive their value or the greater part of their value directly or indirectly from land, minerals, mining or exploration rights in Ireland. However, if the shares in the Irish company are quoted on a stock exchange such capital gains tax does not apply.

Liquidation proceeds are subject to capital gains tax in the hands of the shareholder of the liquidated company, in circumstances where the conditions for the capital gains tax exemption described in above are not met at the moment of liquidation.

Losses on shares

Depreciation on the value of the underlying subsidiary shares is not tax deductible. In certain circumstances where the value of the shares is completely dissipated, the taxpayer may make a claim to the Inspector of Taxes responsible for that taxpayer and when the Inspector is satisfied that the value of the asset has become negligible, the Inspector may allow a claim whereby the taxpayer is deemed to have sold and immediately reacquired the asset for consideration of an amount equal to the value of the shares thus crystallising a capital loss. This capital loss is only deductible against capital gains. However, where the disposal would have qualified for relief from capital gains taxation under the exemption noted above a claim for loss of value cannot be made.

Capital losses incurred on the transfer of shares are only deductible against capital gains.

Costs relating to the participation:

Certain expenses related to managing investment activities of 'investment companies' are allowed against the company's total profits. An investment company is defined as any company whose business consists wholly or mainly in the making of investments, and the principal part of whose income is derived from those investments. This can include holding companies whose investment in this case is the subsidiaries.

Withholding taxes

Dividends: Withholding tax on dividends paid by the holding company of 20%, which may be reduced by tax treaties or under domestic law to 0% - 15%.

Exemptions: Pursuant to the implementation of the EU Parent-Subsidiary Directive, dividend withholding tax is not due on dividends paid by Irish resident companies to companies resident in other EU jurisdictions who hold at least 5% of the ordinary share capital, provided the anti-abuse provision mentioned under 5 below is met.

In addition, domestic exemptions apply if: (i) the individual shareholder is resident in an EU member state (other than Ireland) or a treaty partner jurisdiction; (ii) the parent company is resident in an EU member state (other than Ireland) or a treaty partner jurisdiction and is not ultimately controlled by Irish residents; (iii) the parent company is not resident in Ireland and is ultimately controlled by residents of an EU member state (other than Ireland) or a treaty partner jurisdiction; or (iv) a non-resident company can also qualify for the exemption if the principal class of shares in the company or its 75% parent are substantially and regularly traded on a recognised stock exchange in the EU (including Ireland) or in a treaty partner jurisdiction.

In relation to the domestic exemptions above, the Irish company may pay a dividend free from withholding taxes if the recipient company or individual makes a declaration in the specified form in relation to its entitlement to the domestic exemption. There is no minimum shareholding requirement.

Royalties: Withholding taxes are only applicable to patent royalties, at the rate of 20%. The rate may be reduced to between 0% and 15% by a tax treaty.

Exemptions (i) Pursuant to the implementation of the EU Interest and Royalty Directive into Irish law, no withholding tax is due on cross border interest and royalty payments between associated companies in the EU; (ii) A domestic exemption applies to royalties paid by a company to a company resident for tax purposes in a member state of the EU (other than Ireland) or a treaty partner jurisdiction in certain circumstances; and (iii) A concessionary exemption from withholding tax applies on patent royalty payments made to a non-double taxation treaty resident company once certain conditions are fulfilled.

General Features

Anti-abuse

Ireland has implemented anti-abuse rules included in the amended Parent Subsidiary Directive. The domestic Irish exemptions from interest and dividend withholding tax do not include specific anti-abuse provisions.

Ireland has a general anti-avoidance provision that allows the Revenue to re-characterise 'tax avoidance transactions' under s. 811 TCA 1997. To date, this has not been regularly invoked by the Revenue and there would have to be a strong tax avoidance motive to justify a challenge by the Revenue. It is unclear whether the existing Irish GAAR in s811C TCA 1997 will be regarded as adequate implementation of article 6 of the ATAD or if a new GAAR will be introduced into Irish law.

CFC regime

Ireland introduced CFC rules from 1 January 2019 and has chosen to adopt an 'Option B' approach as provided for under the ATAD. A CFC charge will only arise to the extent that: (a) the CFC has undistributed income; and (b) the CFC generates income by reference to activities carried on in Ireland. There are also several exemptions available. In cases where a CFC charge does arise, it must be calculated in accordance with transfer pricing principles. The amount upon which the charge is calculated is capped by reference to the undistributed income of the CFC.

The CFC charge is applied at the Irish corporation tax rates (12.5% to the extent the profits of the CFC are generated by trading activities and 25% in all other cases).

Income tax treaties / Multilateral instrument ("MLI")

Ireland ratified the OECD MLI on 1st May 2019. Ireland has signed more than 70 double tax agreements ('DTAs'). It has confirmed that it will treat the vast majority of those DTAs as 'Covered Tax Agreements'. The key changes to Ireland's DTAs which under the MLI are the adoption of: a principal purpose test; a tie-breaker test based on mutual agreement to determine tax residence for dual resident entities; and a few measures, including mandatory binding arbitration, to resolve DTA disputes more efficiently.

Transfer Pricing

Ireland's transfer pricing rules, found in Part 35A of the Taxes Consolidation Act 1997, require that transactions between associated companies be carried out at arm's length—that is, on terms that would apply between independent parties. These rules apply to both domestic and cross-border related party transactions.

Crucially, Ireland's transfer pricing legislation is explicitly aligned with the OECD Transfer Pricing Guidelines, meaning the Irish approach, documentation standards, and methodologies are consistent with those in other OECD countries. This alignment ensures multinationals face similar transfer pricing obligations in Ireland as they do in most other developed countries.

Small and medium-sized enterprises (SMEs) are generally exempt from the rules, unless they opt in. Documentation is required for larger companies, and non-compliance can result in penalties.

Country by Country Reporting Requirements

Ireland has implemented legislation on country-by-country reporting and signed the multilateral agreement providing for the automatic exchange of "country by country" (CbC) reports with other participating jurisdictions in relation to certain multinational (MNE) groups. An Irish resident constituent entity of an MNE Group will be required to make

certain notifications to Irish Revenue in relation to its status for CbC reporting purposes before the end of the relevant reporting period.

Tax rulings

The application of the holding company regime does not require an advance ruling. However, if there is doubt as to the application of the regime, for example, whether the group can be regarded as a trading group for the purpose of a capital gains tax relief, the opinion of the Revenue may be sought. This opinion is not binding and ultimately the status of the company will be decided by the individual Inspector of Taxes responsible for that company. However, where full facts are disclosed to the Revenue it would be unlikely that the individual Inspector would come to a different view.

Revenue introduced a formal bilateral advanced pricing agreement (“APA”) programme in 2016. The bilateral APA programme only applies to transfer pricing issues (including the attribution of profits to a permanent establishment.

Ireland (and all other EU Member States) are required to automatically exchange certain information on cross-border tax rulings and advanced pricing agreements (APAs) issued on or after 1 January 2017. In addition, certain tax rulings and APAs issued, amended or renewed on or after 1 January 2012 that were still valid on or after 1 January 2014 are also subject to exchange.

Exchange of information

Ireland has also implemented the OECD framework regarding the compulsory exchange of information on tax rulings issued on or after 1 April 2016. Tax rulings issued on or after 1 January 2010 that were still valid on or after 1 January 2014 had to be exchanged before 2017.

Question 2

Part 1

Domicile is a concept of general law. It means living in a country with the intention of living there permanently. Domicile is a much more permanent concept than residence.

Everyone has a 'domicile of origin' at birth (usually the domicile of the father if the parents were married at the time of birth otherwise the mother). You keep your domicile of origin during your minor years.

So if the parent from whom you get your domicile changes their domicile while you are a minor your domicile changes also. As an adult you keep that domicile unless you take steps to gain a new domicile.

To gain a new domicile, you must show clear evidence that you:

- intend to live permanently in the new country of domicile, and
- do not intend to return to live in your domicile of origin.

Your domicile affects how foreign-source income is taxed in Ireland.

If you are Irish tax resident, but non-ordinarily resident and not domiciled in Ireland for a tax year you will pay Irish tax only on your:

- Irish source income, and
- foreign income, to the extent that it is remitted into Ireland.

This is called the remittance basis of assessment. Remittance means the funds you send to Ireland from abroad by wire, mail or online transfer.

Where an individual's income qualifies for the remittance basis of assessment, his or her foreign income, accumulated before he or she became Irish resident for tax purposes but remitted here after he or she became Irish resident, is not liable to Irish tax. This is a long-standing Revenue practice.

Any remittances out of an account containing capital and income are treated as first coming out of the income part of the fund until such income is fully remitted.

There is anti-avoidance which catches remittances where an individual who is not domiciled in Ireland uses, outside of Ireland, income arising outside of Ireland to make a loan or transfer money to his or her spouse or civil partner, or transfers a property acquired using income arising outside of Ireland, to his or her spouse or civil partner.

A domicile levy applies if you are Irish domiciled and your:

- worldwide income exceeds €1m
- Irish property you own is greater in value than €5m, and
- Irish Income Tax in a year was less than €200,000.

The amount of the levy is €200,000 per year. The valuation date is 31 December each year.

You pay the levy each year you are liable on or before 31 October in the year after the valuation date through the self assessment system.

You can offset the amount of Irish Income Tax that you actually paid in a year against the domicile levy due for that year. You cannot offset the USC against the domicile levy.

Part 2

The "wealthy elite" may be enticed to move to Ireland if they are non-Irish domiciled to avail of the remittance basis of taxation that Ireland offers to resident but non domiciled individuals. They can leave their non Irish source income offshore and only be taxed on the portion of the income or gains that they remit to Ireland. There is no remittance basis charge in Ireland like there is in the UK.

Moving to Ireland might also assist them with inheritance tax planning as non-Irish domiciled individuals are not considered resident in Ireland for five years after they arrive.

Part 3

An Irish domiciled person who is resident or ordinarily resident in Ireland is subject to Capital Acquisitions Tax on any gifts or inheritances they receive whether the disponer is resident or ordinarily resident in Ireland or not and whether or not the property comprised in the gift or inheritance is situate in Ireland or not.

A non-Irish domiciled person moving to Ireland is not treated as tax resident for Capital Acquisitions tax purposes until the 6th tax year after their arrival. For the first five years they're treated as not being resident or ordinarily resident for CAT purposes. This means that they may be able to plan around their inheritance tax exposure on their estates in the first five years without coming within the charge to Capital Acquisitions Tax.

For example they may gift non Irish situate assets to non-Irish resident or ordinarily resident individuals without a charge to Capital Acquisitions Tax arising. However, if the property which is the subject of the gift they are making is situate in Ireland or the beneficiary to whom they are making the gift is resident or ordinarily resident in Ireland the gift is still caught within the charge to Capital Acquisitions Tax.

PART B

Question 3

Part 1

A company is deemed to be tax resident in Ireland if it was incorporated in Ireland on or after 1 January 2015.

However, if, under the provisions of a double tax treaty (DTT), an Irish incorporated company is regarded as tax resident in another territory, the company will not be regarded as Irish tax resident.

In addition, a company will be regarded as Irish tax resident if it is managed and controlled in Ireland, irrespective of its place of incorporation. "managed and controlled" refers to the place where key management and commercial decisions that are essential to the operations of the entity are made. This includes but is not limited to decisions relating to strategy, policies, major contracts or transactions, and overall direction.

To determine where a company is "managed and controlled," tax authorities and courts examine a range of factual factors, including:

- Location of Board Meetings: The jurisdiction where meetings of the board of directors (or equivalent top decision-making body) are usually held.
- Decision-Making Authority: Where the individuals who have authority to make high-level strategic decisions, such as directors or senior management, actually exercise those decision-making powers.
- Documentation and Records: Where company records and important documents (such as minutes of board meetings and resolutions) are kept.
- Residence of Key Decision-Makers: The country of residence of directors or senior managers, especially those who actually participate in strategic management.

This determination is made by looking at the overall facts and circumstances, taking a "substance over form" approach, as established in common law (such as the UK case of *De Beers Consolidated Mines Ltd v Howe* [1906]). Relevant evidence may include minutes of board meetings, patterns of travel, place of residence of key officers, and other supporting documentation.

A company resident in the State is liable to corporation tax on its worldwide profits, not just its Irish source profits. A company not resident in the State is not within the charge to corporation tax unless it carries on a trade in the State through a branch or agency.

Voila Irlandia is Irish incorporated, and the company is wholly owned by a German parent. Voila Irlandia does not have any employees nor have any activities in Ireland hence it could not be considered "trading". Nevertheless the central management and control is occurring in Ireland as the managing director is located in Ireland, with the board meetings occurring on a quarterly basis in Ireland. In this scenario, since the company is managed and controlled in Ireland but does not qualify for the 12.5% trading rate due to the nature of its activities (e.g., passive or investment income, or non-trading group activities), the company would instead be subject to the 25% corporation tax rate.

Part 2

As a rule, a company incorporated in Ireland is regarded as Irish tax resident. Furthermore, to reinforce the company's Irish tax residency status and reduce the risk of challenge, best practice dictates that significant decisions—such as those regarding company policy, investments, and major contractual arrangements—should be demonstrably taken in Ireland. This typically means that board meetings where such matters are resolved must be physically held in Ireland, and that the directors present are actively engaged in, and not merely rubber-stamping, these decisions.

Additionally, the composition and independence of the board are crucial in establishing central management and control within Ireland. Engaging independent, locally based non-executive directors, who possess the expertise to challenge and direct management, can provide further support for the company's residency position and the legitimacy of its Irish operations.

Certain critical questions are included in this assessment to discover where:

- company policy is decided
- investment decisions are made
- major contracts are defined
- the company's head office is located
- the majority of directors live
- cessation of residency

However, if, under the provisions of a double tax treaty (DTT), an Irish incorporated company is regarded as tax resident in another territory, the company will not be regarded as Irish tax resident. Under OECD Tax Treaty, tax authorities consider the highest level of control to decide where central management and control exists, and if this was deemed to be Germany and not Ireland, Voila Irlandia could be deemed to be non-Irish resident.

If Voila Irlandia were to alter its corporate structure or relocate its central management and control outside of Ireland, this could trigger significant tax consequences, including potential capital gains on deemed disposals of assets, unless exceptions apply.

The composition of the board of Voila Irlandia should be considered to see that the requirements for sufficiently qualified directors to ensure that the strategy of Voila Irlandia plc is set by the board, and not by the parent company. All directors should ensure that they attend board meetings in Ireland, rather than in Germany.

Locally recruited, non-executive directors should have sufficient experience and standing to engage in a meaningful way with the management of Voila Irlandia.

Part 3

When a company is no longer tax resident its assets will be deemed to be disposed of at market value. The company must pay tax on any capital gains received from the disposal, except where the assets continue to be used in Ireland by a branch or agency of the company

The purpose of the Exit Tax is to prevent companies from avoiding tax when relocating assets. The rules provide for an Exit Tax on unrealised capital gains. This might occur where companies, without making an actual disposal, migrate their residence or transfer assets offshore. Exit Tax occurs as they leave the scope of Irish tax, by deeming a disposal to have occurred at that time. The current rules came into effect in respect of events which occurred on or after 10 October 2018.

The rate of Exit Tax is 12.5%. However, an anti-avoidance provision is included to ensure that the general rate of CGT will apply if:

- the event, that gives rise to the Exit Tax charge, forms part of a transaction to dispose of the asset; and
- the purpose of the transaction is to ensure that the gain is charged at the lower rate.

Companies may defer the immediate payment of Exit Tax by electing to pay it in equal instalments over five years.

Exit Tax will not apply:

- where Ireland retains taxing rights on a subsequent disposal of the assets such as where they remain within the charge to Irish tax; and
- if the assets of an Irish-resident company continue to be used in Ireland by a permanent establishment of the company after the company migrates.

Question 4

Part 1

The Directors of Hollytown Ltd will need to consider the timing of any tax registrations due to their moving to the Irish market. Each tax has different rules with regard to when a registration is required.

In order to register for VAT and Corporation Tax since the introduction of Companies Act 2014 a non-established company must register a branch in Ireland with the Companies Registration Office. Once the branch has been registered, an application can be made for tax registration.

VAT

The VAT registration threshold in Ireland for services is €40,000 and for goods is €80,000. Where both goods and services are provided, the lower of the two thresholds, €40,000 applies.

From a VAT perspective, a non-established business does not have a VAT establishment and therefore a VAT registration threshold in Ireland. However, the installation or assembly of machines or equipment which, upon installation or assembly, qualify as immovable property are considered services connected with immovable property. The place of supply of services connected with immovable property is where the goods are located at the time of installation. Where the service provider is outside Ireland and the work is carried out in Ireland, VAT is accounted for by the Irish business recipient (customer) on a reverse charge basis.

The supply of the equipment from Great Britain is a zero rated export in the UK. If the Irish customer is the importer of record they can postpone the import VAT on the import into Ireland. If however Hollytown Ltd is acting as importer they will need an Irish VAT registration and apply for postponed accounting to postpone the import VAT. They will then need to charge domestic Irish VAT on the supply to the customer.

If acting as importer Hollytown will need to deal with the customs duty on import as well.

Corporation Tax

Corporation Tax registration is required when a non-resident company has a permanent establishment in Ireland. A permanent establishment is a fixed place of business through which the business of the enterprise is wholly or partly carried on.

The posting of UK Staff to Ireland could indicate that a presence is being created but only if they have authority to conclude contracts on behalf of the company. The fact that the Managing Director of the company who has authority to make decisions on behalf of the company is the first Person initiating contact with Irish Customers, could indicate that they have a Corporation Tax presence in Ireland from the outset. If they set up an Irish branch office then that would give the company a permanent establishment and they would then be required to register for corporation tax. The Irish trading branch would only be subject to 12.5% Corporation Tax on its profits. This tax should be available as a double taxation treaty credit against any UK corporation tax on the same income.

Employer Taxes

A non-resident Employer has an employment registration obligation in Ireland where an Employee spends more than 183 days on duties in Ireland. In fact, if they spend more than 60 days on duties in Ireland then there is also a registration obligation unless they remain resident in the UK and their employment expenses are not borne by a permanent establishment based in Ireland. As soon as they take on an Irish resident employee they will require an Employer registration. If a UK resident employee is sent on secondment to Ireland and it was envisaged that this individual would spend more than 183 days on duties in Ireland, then an Irish payroll should be set up from the outset.

Part 2

The Irish Revenue Commissioners will not require an employer to operate Irish PAYE in respect of temporary assignees that have income attributable to duties performed in Ireland under a foreign contract. A temporary assignee refers to someone who is present in Ireland for a period or periods exceeding 60 days but not exceeding 183 days a tax year. The following criteria must be satisfied:

- The employee is a tax resident of another jurisdiction with which Ireland has a double-taxation agreement;
- The employee is present in Ireland for a period or periods exceeding 60 days but not exceeding 183 days in the relevant tax year; and
- The employee suffers withholding taxes at source in the home country on the income attributable to the duties exercised in Ireland under the foreign employment.

There are a number of other conditions which the foreign employer must also fulfil including applying to the Revenue for agreement not to operate PAYE in these circumstances and providing an undertaking to meet any tax liability which might ultimately arise.

There is a requirement that any apportionment of remuneration between Irish and foreign duties must be agreed in advance with Revenue

UK resident workers who are posted to work in the Ireland branch would be considered cross border workers. Therefore, the number of days that they spend on duties in Ireland should be monitored to establish when they must be put on an Irish payroll. If only part of their work is in Ireland with the remainder of their work remaining in the UK then dual payroll may need to be operated apportioning the salary between the two payrolls.

As the UK resident workers then earn foreign income they will have a tax return filing obligation in their country of residence – the UK- but should be able to claim a double taxation treaty credit for tax and USC deducted under the Irish payroll.

Part 3

It may be preferable for a future streamlining of the business if an Irish company was set up to house the Irish branch activity.

Transfer of Branch to Company

The branch assets could be transferred by Hollytown Ltd to a newly incorporated Irish subsidiary. If any of the branch assets are chargeable assets that would give rise to a gain on disposal . Relief from CGT can be claimed under S617 TCA 1997. The conditions for the relief are that:

- The transferor Hollytown Ltd must be resident in Ireland or if not so resident the asset must have been an Irish chargeable asset of Hollytown before the transfer. Any branch assets would be Irish chargeable assets of Hollytown.
- The transferee the Irish subsidiary must be resident in Ireland.

If the conditions apply the disposal is treated as taking place at a price that would produce no gain or loss for Hollytown in Ireland. If the Irish subsidiary leaves the hollytown group with the asset within 10 years of the acquisition of the assets the capital gain arising on disposal of the branch asset which was deferred is crystallised and charged on the Irish subsidiary under S623 TCA 1997.

Stamp duty of 7.5% arising on a transfer of assets can be relieved under S79 SDCA 1999 since Hollytown and its subsidiary form a 90% group. If the group relationship ceases within 2 years of the transfer the relief can be clawed back.

The transfer of the business from branch to company can be treated as a transfer of business under S20 VATA 2010 and no VAT should apply on the transfer provided both the Hollytown Irish branch and the subsidiary are VAT registered in Ireland.

Once the branch has been transferred Hollytown Ltd can deregister for taxes in Ireland.

Corporation Tax

The Irish subsidiary company will need to register for corporation tax. Once the branch is incorporated all of profits will be taxed in the Irish subsidiary at the corporation tax rate 12.5% for trading income and not subject to tax in the UK.

If a loss was created, this loss cannot be used to reduce the UK profits for corporation tax purposes whereas the losses of a branch can be utilised against the UK profits.

After tax profits of the Irish subsidiary can be distributed by way of dividend to Hollytown. Dividend withholding tax at 25% will not apply to the distribution as Hollytown Ltd is tax resident in a treaty country.

VAT

The Irish subsidiary company will need to register for VAT. All sales of goods and services in Ireland can be conducted by the Irish subsidiary.

Any goods sourced in the UK from Hollytown Ltd can be imported by the Irish subsidiary.

This can be treated as a zero rated export sale from GB and an import into Ireland where the VAT on import can be postponed. Onward sale to the Irish Customer would be subject to Irish VAT.

Employer Taxes

The Irish subsidiary company will need to register as an employer to take over the employees of the Hollytown Irish branch. Under the S.I. No. 131/2003 - European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, more commonly referred to as TUPE, the terms and conditions of employment and the employer's obligations in the contract of employment are automatically transferred to the Irish subsidiary company where there is a transfer of undertaking.

PART C

Question 5

Part 1

Branch:

- A branch is an extension of the parent company and not a separate legal entity.
- Income derived from the Irish branch is subject to Irish corporate tax, but losses can typically be utilised by the parent company.
- Administration can be simpler as it is part of the parent company.

Subsidiary:

- A subsidiary is a separate legal entity incorporated in Ireland.
- It is subject to Irish corporate tax on its worldwide income (generally with credit for any overseas taxes paid).
- Managed locally with distinct administrative responsibilities and corporate compliance.

Tax Implications

Branch:

- Profits are taxed at the Irish corporate tax rate on income generated in Ireland.
- May benefit from a simpler tax filing process, but limited liability protection.
- Double taxation treaties can help alleviate issues of double taxation on profits allocated to the parent.
- No tax is withheld on repatriation of branch profits to the head office. Depending on tax rules in home jurisdiction, the foreign company may be subject to corporate tax on the results of the Irish branch (generally with credit for Irish tax paid). This is likely to arise in this situation as the French CT rate is higher than that in Ireland.

Subsidiary:

- Subject to Irish corporate tax on all of its income, both Irish and foreign.
- Eligible for Ireland's beneficial corporate tax rates (e.g., 12.5% on trading income).
- Greater access to Ireland's tax treaties and EU directives, which may provide tax efficiencies in cross-border scenarios.
- Provides limited liability, isolating business risks to the subsidiary.

Both a branch and a subsidiary company can avail of Ireland's 12.5% corporate tax rate. However, an Irish branch company only qualifies for this rate on sales within the State. Whereas an Irish subsidiary company will receive the 12.5% corporate tax rate on sales in Ireland and internationally.

If a loss is incurred in the Irish operations, if a branch of the French company is used, it should be available for immediate offset against the taxable trading profits of JJS for the accounting period in question. Therefore, the branch losses would have the immediate impact of reducing the French CT liability. If however, a subsidiary is incorporated in Ireland, such a loss cannot generally be surrendered cross-border.

As it is anticipated that the Irish operations will be loss making for the first number of years, it is advisable that a Irish branch is first used. This structure will ensure maximum tax relief is available in for losses incurred in branch. Thus, the corporation tax liability of JJS should be reduced.

Part 2

Irish regulations follow the arm's-length principle and adopted the 2017 OECD Guidelines into the domestic legislation for accounting periods beginning on or after 1 January 2020. The forecasted sales whilst they are trading transactions, would fall within the Small and Medium Enterprises exemption from transfer pricing documentation requirements.

The SME exemption is provided under section 835E of the Taxes Consolidation Act 1997 (TCA 1997) as amended. Irish transfer pricing rules (as per Part 35A TCA 1997) require transactions between associated persons to be conducted at arm's length and impose documentation requirements. However, qualifying SMEs are exempt from these requirements, unless an election has been made to apply transfer pricing rules.

For the purposes of transfer pricing, an SME follows the EU definition, and broadly means a company or group meeting both of the following thresholds:

- Fewer than 250 employees, and
- Either:
 - Annual turnover not exceeding €50 million, or
 - Annual balance sheet total not exceeding €43 million.

The thresholds apply on a group-wide basis: If the company is part of a group, the figures for all group companies are aggregated.

Terms of the Exemption:

- Arm's Length Principle: Transactions between associated persons undertaken by SMEs are NOT required to be at arm's length for Irish tax purposes (except where anti-avoidance or other specific provisions may apply).
- Transfer Pricing Documentation: SMEs are not required to prepare or maintain formal transfer pricing documentation under Irish legislation.
- Applicability: The exemption is automatic provided the SME conditions are met. However, an SME may make an election to be subject to the transfer pricing rules if it so wishes.
- Connected Capital Transactions: The SME exemption extends to both trading and non-trading (including capital) transactions.
- Loss of Exemption: If an enterprise (or its group) exceeds the SME thresholds in a given period.

Question 6

Part 1

Czechia domestic legislation provides for a 30% withholding tax on dividends. We are required to consider the OECD Model Tax Convention to determine whether this withholding tax can be reduced.

Article 10 of the OECD convention deals with dividends.

(10)(1) provides that dividends paid by a company resident in a Contracting State (Czechia) to a resident of the other Contracting State (Ireland) may be taxed in that other State (Czechia). Therefore, the treaty does not provide a complete exemption from withholding tax.

Article 2 however provides that if the beneficial owner of the dividend is a company which holds at least 25% of the capital of the company paying the dividend the withholding tax rate can be reduced to 5%; otherwise the withholding tax rate will be 15%.

As Fogarty Ltd only owns 20% of Max sro, Max sro. will be required to withhold tax at 15% from the dividend.

As Fogarty Ltd doesn't have a permanent establishment in Czechia, it is not necessary to consider paragraphs 4 and 5.

Part 2

Domestic legislation provides for a 20% withholding tax rate. We are required to consider whether the OECD treaty reduces this rate.

Article 11 of the Treaty deals with interest payments. Paragraph 1 and 2 provide that interest can be taxed in both jurisdictions. However, it reduces the interest withholding tax to 10% where the company receiving the interest is the beneficial owner of the dividends.

Paragraph 4 provides that this reduced 10% rate shall not apply if Fogarty Ltd carried on business in Croatia through a permanent establishment and the loan in respect of which the interest is paid is effectively connected with the permanent establishment. In such a scenario, the interest would be taxed under Article 7 (Business Profits).

Based on the information provided, in accordance with Article 5 Fogarty Ltd would be considered to have a permanent establishment in Croatia. However, we are advised that the interest is a payment from an unrelated third party. Therefore, the interest should not be considered "effectively connected" with the permanent establishment. Therefore, paragraph 4 should not apply.

Therefore, the payor should withhold 10% tax from the interest payment.

Part 3

Domestic legislation provides for a 15% withholding tax rate.

Article 12(1) of the Convention provides that royalties in a Contracting State (the Netherlands) and beneficially owned by a resident of the other Contracting State (Ireland) shall be taxable only in that other State (Ireland).

Therefore, the OECD provides for an exemption for withholding tax on royalties.

In this scenario however paragraph 4 is relevant. This provides that where the royalties paid are excessive, Article 12 only applies to the arm's length rate (i.e. the 6% royalty payment).

The excess royalty payment remains taxable according to the laws of each State "due regard being had to the other provisions of this Convention". The excess will need to be reclassified into the most appropriate income class and if both States cannot agree they may refer to the Mutual Agreement Procedure.

Question 7

Treaties do not impose tax but can allocate taxing rights to a particular State or offer a relief by way of tax credit for one States tax against another.

Tax Residency Tie Breaker

Where an individual can be considered a resident of both State under their domestic legislation then the treaty offers relief in the form of a tie breaker to determine where the individual is treaty resident.

The tie breakers are dealt with in order and if the first cannot be satisfied you move on to the next and so on.

- 1) the country where you have a permanent home available to you, or otherwise,
- 2) if you have a permanent home in both countries, the country (permanent home) where your personal/economic ties are closer (this is known as your 'centre of vital interests'), or otherwise,
- 3) if it is not possible to determine at which permanent home your centre of vital interests lies, or if you do not have a permanent home, the country where you have a habitual abode, or otherwise,
- 4) where the habitual abode test is not decisive, the country where you are a national, or otherwise,
- 5) if you are a national of both countries (or of neither), then the countries must settle the matter by mutual agreement.

Dividends

Irish Dividend withholding tax will apply at the lower of the domestic rate currently 25% in Ireland or the double taxation treaty rate.

Under the treaty the maximum treaty rate is 15% of the gross amount of the dividends. This means that a non Irish resident but still ordinarily resident individual can seek a refund of the difference between the domestic and treaty rates.

The UK currently has no dividend withholding tax but should they introduce it the maximum rate that can apply to an Irish resident individual receiving a dividend from the UK is 15%..

Interest

Withholding tax will apply at the lower of the domestic rate or double taxation treaty rate.

The UK and Ireland domestic rates are both 20% but the Ireland/UK treaty allows relief so the recipient state taxes the interest.

Royalties

Withholding tax will apply at the lower of the domestic rate or double taxation treaty rate.

The UK and Ireland domestic rates are both 20% but the Ireland/UK treaty allows relief so the recipient state taxes the royalty.

Income and Gains

While income and gains may be taxed both in the country of residency of the individual or company and in the country of source the double taxation treaty allows a credit for the tax suffered in the paying state against the tax suffered in the state of residency.

Therefore the treaty eliminates double taxation up to the maximum of the lower of the two amounts of tax applying in each state.

Universal social charge is treated as a tax for the purposes of treaty relief so therefore is taken into account in any double taxation treaty credit to be claimed in the UK against UK tax suffered on the same Irish source income.

Government Service

Government employment and government pensions in respect of services rendered to the state or subdivision of the local authority in discharging functions of a governmental nature are only taxable in the state of payment.

Only certain government jobs are covered by article 18 of the treaty. It applies to those employed in educational institutions and to other government jobs that are wholly funded by a contracting state or political subdivision or local authority thereof. However the general consensus is that local authority workers are entitled to the relief as are those in the defence forces and those in the higher grades of the civil service as they provide services to the government.

However other categories of workers who are funded by the government such as front line workers in the health services are not generally covered. This means that they can be taxed both in the state of payment and in the country of residency as well. The treaty offers double taxation treaty relief in such circumstances to ensure that double taxation does not arise but the credit available is limited to the lower amount of the tax paid in both jurisdictions.

Personal Allowances

Individuals resident in the UK and individuals resident in Ireland are entitled to the equivalent personal allowances reliefs and deductions as would be available to citizens of the other state.

In Ireland a non resident is only entitled to full tax credits if 75% or more of their income is Irish source income. If less than 75% is Irish source income then the tax credits are apportioned by Irish source income divided by Worldwide income

Capital Acquisitions Tax

The Double Tax Convention between Ireland and the UK covers inheritance tax in the UK and CAT in Ireland and allows a double taxation treaty credit for tax suffered in one State against tax on the same property in the other State. While the two systems have a different basis of charging the individual and very different amounts of tax can arise in both States the treaty offers some relief. The relief is limited to the lower of the UK and Irish effective rates of tax.

Question 8

Any of the following may be taken as an example:

The government polices include clearance procedures and withholding obligations on agents acting for the non resident.

CGT

S980 TCA 1997 15% withholding tax on capital gains tax proceeds on sale by a non resident of Ireland situate specified assets. This section does not apply where the value of the asset disposed of does not exceed €500,000 or €1,000,000 in the case of a house or apartment, where a capital sum derives from a settlement under an insurance policy, or where the vendor is a body specified in Schedule 15. Neither does it apply to a disposal by NAMA or by a 51% subsidiary of NAMA.

A capital gains tax clearance cert a CG50 application can be made where the non-resident vendor is paying the CGT up front or can demonstrate by way of calculation that there is no gain.

To alleviate the risk that solicitors faced in potentially being deemed an assessable person for the purposes of the tax should the non-resident Beneficiary fail to make a return and pay the tax a clearance procedure was introduced for all CGT transaction involving non residents irrespective of the value.

A solicitor or tax agent can make an application for clearance under section 1034/1043 TCA 1997 to distribute sales proceeds to a non-resident. If they receive no response with 35 working days they can go ahead and distribute and will not be held personally liable by Revenue for any relevant taxes provided they have followed the Revenue Clearance guidelines.

CAT

Special rules apply in order to ensure that non-resident beneficiaries make returns and pay their tax. Where the Personal Representative or Executor of the Estate is Irish resident, then that person is obliged to ensure that the Non-Resident Beneficiary discharges the tax and if such Beneficiary fails to do so, the Personal Representative can be personally assessed for the tax. Exposure to assessment is limited to the amount of assets under the Personal Representatives control to which the Beneficiary is entitled. In order to allow the Personal Representative discharge this onerous obligation, such Personal Representative has the power to sell the assets to which the Non-Resident Beneficiary is entitled.

In the event that some or all of the Beneficiaries are non-resident and the Personal Representative or Executors are also non-resident in Ireland, then under Section 48(10) of the Capital Acquisitions Act (as amended by the Finance Act 2010) requires such Personal Representative or Executor to appoint a solicitor who is lawfully practising in Ireland to act in connection with the administration of the deceased person's Estate. The Probate Office will not issue a Grant of Probate or Letters of Administration without such a solicitor having been so appointed.

To alleviate the risk that solicitors faced in potentially being deemed an assessable person for the purposes of the tax should the non-resident Beneficiary fail to make a return and pay the tax a clearance procedure was introduced.

A solicitor or resident personal representative can make an application for clearance under section 48(10) to distribute benefits to non-resident beneficiaries . If they receive no response with 30 days they can go ahead and distribute an will not be held personally liable by Revenue for any relevant taxes provided they have followed the Revenue Due Diligence procedure.

Income Tax or Corporation Tax on Rent

Where rents are paid directly to a person whose usual place of abode is outside the State, the tenant is obliged to deduct income tax at the standard rate from the payment (section 1041 TCA 1997). The tenant then gives the landlord a certificate of the tax deducted on Form R185 (Certificate of Income Tax Deducted). The landlord is entitled to claim relief for expenses which are usually allowed in arriving at the rental profit and may be entitled to a proportion of personal allowances. A payment into a bank account in the name of the landlord is payment directly to the landlord.

Where rents are paid to a person whose usual place of abode is in the State, for example to an Irish based estate agent acting on behalf of a non-resident landlord, the tenant is not obliged or entitled to deduct income tax.

The collection agent who acts for a non-resident landlord may:

- deduct withholding tax from rental payments to non-resident landlords, and

- remit that tax to Revenue.

This is currently at the standard rate of 20%. This deduction applies to every rental payment.

The non- resident landlord is chargeable on the rents and responsible for filing their own income or corporation tax return. They can claim credit on that return for the withholding taxes deducted at source by the agent or tenant.

Income Tax on Professional Services

A withholding tax, at the rate of 20%, is deductible at source from payments for "professional services" made to individuals and companies by "accountable persons" (Government Departments, local authorities, health boards, State bodies, etc.). The tax applies generally to fees and similar payments made by listed accountable persons but does not apply to payments already covered by PAYE or the construction industry tax deduction scheme. The tax also applies to payments made by health insurers under contracts of insurance to cover fees for services provided by medical practitioners in certain circumstances. The tax is charged on payments net of value-added tax.

Income Tax or Corporation Tax on Construction, Forestry or Meat Processing

Relevant Contracts Tax applies to payments made by a principal contractor to a subcontractor under a relevant contract (this is a contract to carry out, or supply labour for the performance of relevant operations in the construction, forestry or meat processing industry). Payments to subcontractors in respect of a relevant contract are generally made under deduction of tax, but payments can also be made gross where the subcontractor satisfies certain conditions.

RCT applies to both resident and non-resident contractors operating in the construction, forestry or meat processing industry.

Rates of deduction are 35%, 20% and 0%. A refund of the taxes deducted can be claimed by the subcontractor. A subcontractor with a permanent establishment in Ireland will have to file an income tax return whereas one who does not have a permanent establishment can apply to the International Refunds section.