THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2021

MODULE 2.06 – IRELAND OPTION

ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

TIME ALLOWED – 3¼ HOURS

This exam paper has **three** parts: **Part A**, **Part B** and **Part C**.

You need to answer **five** questions in total. You will **not** receive marks for any additional answers.

You must answer:

- **Both** questions in **Part A** (25 marks each)
- **One** question from **Part B** (20 marks)
- **Two** questions from **Part C** (15 marks each)

Further instructions

- All workings should be made to the nearest month and in Euros, unless otherwise stated.
- As you are using the online method to complete your exam, you must provide appropriate line breaks between each question, and clearly indicate the start of each new question using the formatting tools available.
- Marks may be allocated for clarity of presentation of your answers.
- The time you spend answering questions should correspond broadly to the number of marks available for that question. You should therefore aim to spend approximately half of your time answering Part A, and the other half answering questions in Parts B and C.
- There is no separate reading time, so you can start typing your answers as soon as the exam begins. However, we recommend that you set aside some time to thoroughly read each question and plan each of your answers.

PART A

You are required to answer BOTH questions from this Part.

1. You are the tax manager in the Irish office of a worldwide firm of professional advisers. Your firm organises an annual global tax conference, which will be held virtually this year.

   Recent Irish tax legislation has been shaped by the OECD Base Erosion and Profit Shifting (BEPS) project, as well as tax developments within the European Union. The worldwide office network is interested to learn about Ireland's attractiveness as a holding company location from a tax perspective, considering these OECD and EU developments.

   You are required to present, on behalf of the Irish office, a summary paper outlining the main features of Ireland as a holding company location from a tax perspective. The summary paper should address, among other things, how trading and passive income are taxed in Ireland, as well as capital gains.

   (25)

2. You have received the following email from Tommy, a potential new client in the United Kingdom who is based in Northern Ireland.

   > "I have a quick question for you. It won't take you long because I already looked it up myself and I think I know the answer – I just want to check it with you.
   >
   > I moved to Northern Ireland in June 2019 when I got married and have been living there ever since. I am from Dundalk, in the Republic of Ireland, where I had previously lived all my life. I didn't change jobs when I moved, and I am still employed by the local government in Dundalk, commuting daily from Northern Ireland.
   >
   > My uncle died last month and has left me his farm and house in the Republic of Ireland, specifically in County Wicklow. I know there are inheritance tax rules, having searched online and found that, because I am living in Northern Ireland, there is no UK Inheritance Tax to pay if the estate is below £325,000. My uncle had other assets and some property in the UK, but as I am only receiving the farm in Wicklow worth €150,000 I should have no tax to pay. Can you confirm whether am correct?"

   You are required to:

   1) Advise Tommy on the Irish tax implications of his inheritance. (10)

   2) Advise Tommy on the tax treatment of any future income which he obtains from the farm. (6)

   3) Explain whether your answer to (1) would be different if Tommy's uncle had lived outside of Ireland for most of his life, and your reasoning. (3)

   4) Explain whether there are any articles under the double taxation agreement between Ireland and the UK that would be relevant to Tommy's tax position, now that he has moved to Northern Ireland. Does the convention relating to inheritance tax between Ireland and the UK include any articles that would be relevant to a cross-border inheritance? (6)

   Total (25)

PART B

You are required to answer ONE question from this Part.

3. You are a tax manager at CCC Tax Advisers. One of your clients is Owl S.p.a, a multinational corporation incorporated in Italy and quoted on the Borsa Italiana stock exchange in Milan.

The chief financial officer of Owl S.p.a has requested your advice on the tax residence of one of its subsidiaries, Owl Irlandia, an Irish registered company which was incorporated on 1 January 2014. Owl Irlandia acts as a regional sub-holding company, owning other companies within the Owl Group across Europe and Asia as well as a subsidiary in Bermuda. Owl S.p.a also owns another Irish company, Owl Trading Ltd, which engages in manufacturing activities in Ireland.

Owl Irlandia regularly receives dividends from the group companies which it owns, and it in turn pays dividends to Owl S.p.a. Quarterly board meetings of Owl Irlandia have, since its inception, taken place in the Cayman Islands, where it pays an annual flat tax of $5,000. Owl Irlandia employs a service provider in the Cayman Islands to provide administrative and accounting services. All board directors travel to the Cayman Islands for the board meetings.

Owl Irlandia's board consists of the following individuals:

- Orla Dunne, the executive director of Owl Irlandia and an Irish resident, who has worked in Galway for the Owl group for the last twelve years;
- Bruno, Owl Group's European operations head, who is resident in Milan; and
- Two experienced chartered accountants, Maeve and Ciara, who are resident in the Cayman Islands, have retired from audit practice and now hold several non-executive directorships.

The board meetings always include a full agenda. Maeve and Ciara are usually outvoted on contentious issues of strategy and risk.

You are required to prepare a memorandum for the chief financial officer, including:

1) **Your determination of the tax residence of Owl Irlandia. You should assume that the double taxation agreement between Ireland and Italy follows the OECD Model.** (14)

2) **Your recommendations for Owl Irlandia's board to avoid any treaty-related tax challenges.** (6)

Total (20)

4. Clarkes Plant Hire Ltd (CPH) is a company registered in the United Kingdom, which having traded in Northern Ireland for several years has recently acquired some new customers in the Republic of Ireland. CPH provides digger and landscaping services to its customer base of businesses and private individuals. It also rents out plant and machinery, and sells some of its previously hired stock through its store in Northern Ireland.

As part of CPH's initial expansion into the Irish market, only the managing director and two of the Northern Ireland staff will spend time in the Republic of Ireland, performing the company's services and conducting rentals and sales. However, CPH's management team plans to eventually open a shop in the Republic of Ireland. They may employ local staff to operate the shop, rather than requiring Northern Ireland employees to commute to it.

The management team is excited about its planned Irish expansion, and want to ensure that no rules are breached when it comes to tax compliance.

You are required to:

1) **Outline the tax implications for CPH of the planned move into the Republic of Ireland market.** (8)

2) **Explain the tax implications for those Northern Ireland employees who are posted to work in the Irish branch.** (4)

3) **Offer your suggestions how CPH's current structure might be streamlined to facilitate future growth and tax efficiency.** (8)

Total (20)

PART C

You are required to answer TWO questions from this Part.

5. You are tax adviser to CoCo Ltd (CCL), a company in the United Kingdom which develops ethical and sustainable beauty products. CCL manufactures the beauty products at a rented facility in the UK and distributes them through a network of wholesalers in the UK. Sales have to date been mainly within the UK, but gaining market share in Ireland is CCL's immediate focus, with other European markets to be developed subsequently.

At a recent board meeting in the UK, it was agreed that CCL should set up an operation in Ireland. The following options have been proposed:

a) establishing an Irish branch of CCL; or
b) incorporating an Irish subsidiary company.

CCL is a profitable company which pays substantial amounts of Corporation Tax in the UK each year. The Irish operations will sell the products manufactured by CCL. It is expected that it will take several years for either an Irish branch or a subsidiary to gain a significant market share in Ireland, with extensive marketing investment required, and it may take several years for the Irish operation to be profitable.

Two sales personnel are initially expected to be employed in Ireland, rising to fifteen by year two. Sales in Ireland are forecasted at €15 million in year one, and €30 million in year two.

You are required to advise on the following:

1) Whether CCL should set up a branch or incorporate a subsidiary in Ireland; and (10)

2) Any transfer pricing considerations which may arise on the Irish expansion. (5)

Total (15)

6. Clyde Ltd is an Irish resident trading company with subsidiaries, trading operations and interests in several OECD countries, each of which has a double taxation agreement with Ireland.

In 2020, Clyde Ltd's overseas subsidiary companies, holdings and income included the following:

- Clyde Ltd owns 20% of a company in Italy, Bonnie S.r.l. During the year, Bonnie S.r.l. paid a dividend to Clyde Ltd. Under Italian domestic tax legislation, a 30% withholding tax obligation arises on the payment of dividends. Clyde Ltd does not have any other business interests in Italy.

- Clyde Ltd has a branch in Greece. Employees of Clyde Ltd work at the Greek branch, selling IT educational materials to universities. Clyde Ltd has lent money to an unrelated third party company, tax resident in Greece, at an annual interest rate of 5%. This investment by Clyde Ltd was conducted independently of its branch activities in Greece. Under Greek domestic legislation, a 20% withholding tax applies on interest payments.

- Clyde Ltd owns 100% of a trading company in the Netherlands, Trader BV. Clyde Ltd owns intellectual property which Trader BV has used for its business, in exchange for a royalty payment to Clyde Ltd. Clyde Ltd charged Trader BV a royalty of 10% of net sales, whereas it only charges third parties a royalty of 6% of net sales. The Netherlands' domestic tax legislation in Holland includes a 15% withholding tax on the payment of royalties.

You are required to outline the withholding tax implications, for the payer company, of the following transactions. In each case you should assume that the OECD Model Tax Convention applies, and analyse the relevant articles of the OECD Model Tax Convention. You are not required to provide any calculations.

1) The dividend paid by Bonnie S.r.l. (5)

2) The interest paid by the Greek third party company. (5)

3) The royalty paid by Trader BV. (5)

Total (15)

7. The following argument was presented at a recent tax seminar for cross-border employers:

> "Global mobility of employees is essential to any business which wishes to have a global outlook. You don't even have to leave the island of Ireland for global mobility rules to become an issue. So global in our case is local."

You are required to answer the following questions:

1) **Which taxes and social security contributions are deducted from employment income in the Republic of Ireland?** (5)

2) **What relief might be available to a foreign employer under the terms of a double taxation agreement?** (4)

3) **If a foreign employer posts one of its existing workers to work in the Republic of Ireland for a period amounting to 65 working days in November and December 2019 and January 2020, all of which fall within the company's accounting period ending 31 March 2020, what is the employer's obligation in relation to the deduction of taxes? Will your answer differ if the same foreign employer decides to fill the post by recruiting locally in the Republic of Ireland?** (6)

Total (15)

8. Jimmy Jones was born in Dublin, Ireland, where he worked for a time after graduating from university. In 2019 he took up a job in the United Kingdom. His wife, Grace, remained in Dublin while Jimmy commuted to London for work on a weekly basis.

At the beginning of the contract Jimmy returned home every weekend to see his wife, but as time went on and his work schedule grew increasingly busy he commuted less frequently. Grace enjoyed occasional visits to London, so would sometimes travel to the UK to see Jimmy rather than the other way around.

Grace and Jimmy are expecting a baby, and are looking to their future to determine where they should live. Jimmy has now been an employee of the UK company since January 2019 and all of his earnings are paid with UK tax deducted. He has recently received an offer for some contract work in Dublin. This would be categorised not as employment but as advisory work on a self-employed contract basis. Jimmy is considering his options, but believes he could manage the part-time contract in Dublin alongside his full-time UK employment in London.

Jimmy has retained contact with friends and family on a regular basis in Dublin, and is still a member of a golf club there. When in Dublin he often meets up with friends for a game and attends club functions. Pictures of these gathering are often posted on social media, which is the main method that Jimmy uses to keep in contact with friends and family while away. In order to keep his golf handicap at its current level, Jimmy joined a golf club in the UK and plays occasional midweek games while working there.

Since moving to London Jimmy had been living in temporary accommodation, but in early 2020 he acquired a small property close to his workplace.

One of Jimmy's friends who has been commuting between London and Dublin for several years encouraged Jimmy to approach you for advice on his tax residence and the tax consequences of his earnings.

You are required to advise Jimmy with regard to the relevant tax residence rules and the application of these to his work circumstances. (15)