THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2024

MODULE 2.06 – IRELAND OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Part 1

Determination of tax residence

A company incorporated in Ireland is automatically regarded as tax-resident in Ireland. In all other cases, residence is based on where the company is centrally managed and controlled. The term "central management and control" is, in broad terms, directed at the highest level of control of the business rather than the day-to-day operations. It looks to the strategic control of the company, including the formulation of company policy, how the company deals with financing and capital structure, etc.

If a company incorporated in Ireland is managed and controlled in a jurisdiction with which Ireland has signed a double tax treaty ("treaty"), it may be regarded as resident in that other state under the "tiebreaker" clause of the treaty with that state. As a result of the implementation of the OECD's Multilateral Instrument (MLI) in 2019, it may be necessary to secure the agreement of the relevant competent authority under a treaty in relation to the residence status of an entity.

Taxation of resident companies

A company that is resident in Ireland under the rules described above will be liable to Irish corporation tax on its worldwide profits. Profits brought into the charge to Irish corporation tax are the sum of the company's income plus chargeable gains before allowable deductions. The profits on which corporation tax is ultimately borne are the total amount of profits after making all deductions and taking all relevant reliefs.

Corporate tax rate

There are two rates of corporation tax in Ireland:

- the 12.5 percent rate applies to trading income generated or received by an Irish company; and
- the 25 percent rate applies to passive income or income arising from a possession outside of Ireland (i.e., a foreign trade).

There is no statutory definition of trading in the Irish tax legislation. The question of whether a trade is being carried on is primarily a question of fact. In general, "trading" means the carrying on of business or the engaging in activities on a regular or habitual basis with a view to realizing a profit.

Part 2

Formal transfer pricing legislation (the "Irish TP Rules") was introduced for the first time in 2010 in respect of accounting periods commencing on or after January 1, 2011, for transactions the terms of which were agreed on or after July 1, 2010.

A number of changes to the Irish TP Rules were introduced from January 1, 2020. The changes brought the Irish TP rules into line with the 2017 OECD Guidelines. While these guidelines had, in practice, already applied to Ireland's double tax treaties, the changes significantly broadened the scope of the Irish TP rules and included an extension of the Irish TP Rules to non-trading and capital transactions.

To fall within the Irish TP Rules, there must be an arrangement between associated parties involving the supply and acquisition of goods, services, money, intangible or chargeable assets. The rules provide that in the case of a transaction where the amount paid to the supplier exceeds, or the amount received from the customer is less than, the arm's-length price, then the profits of the customer or vendor respectively will be calculated as though the price was an arm's-length price. Ireland's TP Rules apply the arm's-length principle which is to be interpreted in accordance with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrators (OECD Guidelines). The rules apply to both cross-border and domestic transactions.

Two persons are associated if one controls the other or both are controlled by the same person. The controlled person in each case must be a company. A company will be treated as controlled by an individual if the individual together with relatives of that individual (i.e., husband, wife, ancestor, lineal descendant, brother or sister) control it. Although the legislation was extended to include small and medium-sized enterprises ("SMEs"), they are subject to enactment under a ministerial order.

Taylor Telecoms Inc and the Irish entity to be incorporated will be under the common control of Taylor Telecoms Inc. Clearly the proposed reseller agreement between Taylor Telecoms Inc and the Irish entity would be an arrangement between two associated companies and thus fall within the Irish TP rules, with the requirement to calculate the remuneration between the two parties as if it were a third party bargain at arm's length unless there is an applicable exemption.

The transfer pricing regime does not currently apply to enterprises that employ less than 250 employees, and have a turnover not exceeding 50 million euros, or total assets not exceeding 43 million euros. A domestic "carve-out" applies to certain non-trading transactions where both the supplier and acquirer are qualifying persons. It is likely that the Irish entity will exceed both of these thresholds in its first year and thus the TP rules will apply.

The legislation provides that the relevant person (i.e. the person charged to tax under Case I or II of Schedule D) is required to have certain detailed documentation in place and available for review. Guidelines on what the necessary documentation might include were issued by Irish Revenue in June 2010. To the extent that transactions are covered from the other side (e.g. a transaction between a US parent and an Irish subsidiary where US TP documentation has been prepared), additional Irish-specific documentation may not be required. However, some analysis should be done at the time that the transaction is entered into to determine that the transaction is arm's length. Documentation should be prepared on a timely basis, but no specific time deadline is outlined. Normal practice is to expect documentation within 28 days of request. Such documentation should, where possible, be backed up by legal contracts and agreement.

Importantly, Irish Revenue has confirmed that they will accept documentation that has been prepared in accordance with either the OECD Transfer Pricing Guidelines or the code of conduct adopted by the EU Council in relation to transfer pricing documentation. This should reduce the additional burden imposed on multi-national groups by the new rules as there will already be documentation in place where the counterparty is resident in territory which already has transfer pricing legislation.

Part 3

In general, arm's-length expenses that are incurred wholly and exclusively for the purposes of the trade are tax-deductible. A deduction for interest is allowed only to the extent that borrowings are used for the purpose of a trade or acquisition of certain non-trading assets. Therefore the Irish entity of Telecom Taylor should be able to obtain a deduction in principle for the interest it pays to its parent company for the debt finance provided to enable the Irish operations to be established and developed.

In addition, interest on borrowings between related parties will be subject to Irish transfer pricing rules (including debt capacity and serviceability considerations) as well as Interest Limitation Rules (ILR). The Irish transfer pricing rules will require an arm's length interest rate to be applied to the loan arrangement between the Irish entity and its US parent.

Thin capitalisation and other interest deductibility rules

Ireland has no thin capitalisation rules. There are, however, anti-avoidance provisions to close off potential abuses related to indebtedness created by intragroup transfers in relation to artificial structures aimed at tax reduction rather than normal business activity.

Interest Limitation rules

The Finance Act 2021 implemented interest limitation rules ("ILR") as required by Directive 2016/1164/EU (the AntiTax Avoidance Directive) (ATAD). The ILR, set out in Part 35D of the TCA, apply to accounting periods commencing on or after January 1, 2022. The ILR potentially apply where a taxpayer's interest expense exceeds its interest equivalent income. The ability to claim a tax deduction for the excess interest is restricted to 30 percent of EBITDA (earnings before deductions for net interest expense, tax, depreciation and amortization). Therefore the Irish entity will need to calculate its EBITA and accordingly the intereset deduction will be limited to a maximum of 30% of this amount.

Any interest above that amount is not deductible in the current year. Instead, interest deductibility is deferred until such time as there is sufficient interest capacity to allow deduction.

However, there are certain exemptions to the ILR. These exemptions are:

- companies with net interest expense of €3 million or lower;
- standalone companies with no associates, group companies or permanent establishments outside Ireland;
- interest on borrowings for Long-Term Public Infrastructure Projects are not subject to the ILR; and
- interest on legacy debt (terms agreed on, or before, 17 June 2016).

Of these exemptions, it is clear that only the first could potentially be applicable, however the actual net interest expense for the Irish entity will need to be computed to confirm.

A company may be a member of a group. The debt position of that group is considered when assessing whether excessive interest deductions are taken. There is an equity-escape carve-out from the ILR. If the ratio of equity to total assets of the interest group is no lower than two percentage points below the worldwide group's ratio of equity to total assets, then the equity ratio rule applies, and no interest restriction should arise. Therefore the total debt position of the Taylor Telecom group will need to be reviewed and the equity ratio rule calculated globally versus the Irish equity ratio as this may also be useful to ensure that the full interest payable from the Irish entity to Taylor Telecom Inc is tax deductible in Ireland

Question 2

Dear Roberta

I understand you're going to take up a contract for building work in the Republic of Ireland (ROI). The ROI has an entirely different tax system from the UK.

Relevant Contracts Tax (RCT)

You will need to register as a principal contractor to account for taxes on any subcontractors you take on.

The RCT system is a tax deduction system based on Relevant Contract payments which covers both materials and labour. The deduction rates are 35%, 20% and 0%. If each subcontractor is not registered on the Irish RCT system the deduction rate will default to 35%.

If registered the rate would be reduced to 20% and will not increase to 35% unless there's a pattern of non-compliance by the subcontractor.

The 0% rate RCT deduction will not be granted initially but will be granted when a pattern of compliance is established.

You yourself, will also be treated as a subcontractor and RCT will be deducted at the relevant rate on your payment as explained above.

VAT

A reverse charge applies for VAT purposes so that the subcontractor under an RCT contract does not charge VAT to the Principal contractor. The Principal contractor self-accounts for VAT on a reverse charge basis. As you will be a Principal contractor as well as a subcontractor you must register for VAT to self-account for the VAT on your subcontractors invoices. You may also recover VAT on inputs.

Income Tax

If you bring some of your existing employees to work in Ireland, They can continue to be paid through the UK payroll initially. However if they are to work in Ireland for 60 days or more, then you will have an obligation to inform the Irish revenue commissioners and register as an employer. There would be no obligation to deduct payroll taxes unless it is known from the outset that they're going to reach 183 days of duties in Ireland. If however they exceed the 60 days and do breach the 183 days a PAYE deduction obligation will arise from that point.

If you pay expenses to your employees on top of their weekly wage you will have to return these in real time through the payroll in Ireland once the Irish payroll obligation arises.

Customs

If you wish to bring vans and tools to Ireland there are customs implications. You should apply for a temporary admission or an ATA Carnet to avoid a customs liability on your own vans and tools.

Double tax relief

The taxes deducted in Ireland under RCT will first be credited against your income tax liability in Ireland and then any excess refunded. You can then take a credit under the double taxation treaty for the net liability suffered in Ireland against your taxes in the UK.

Likewise the employees and subcontractors that are non-residents of Ireland can take credit under the double taxation treaty for the net liability suffered in Ireland on their earnings there.

Extension of Contract

If you extend the contract beyond the initial six months or take on a further contract in the Republic of Ireland you may become resident of the ROI depending on the amount of time you spend there. The tests for residency in ROI are as follows:

- 183 days at anytime during the day then you are resident for the current tax year; and
- 280 days over two years at anytime during the day with a minimum 30 days and each year then you are resident in the second of the two years.

If you're considered resident in both the UK and Ireland then you can look to the tax treaty tie Breakers to decide which jurisdiction you're resident in. The first tiebreaker is permanent home and the second is central vital interests. Since it's unlikely you would have switched your permanent home from the UK to Ireland you would be considered treaty resident in the UK.

Extending the contract beyond six months makes it more likely that you will have to run an Irish payroll for your employees.

Since the profits from this contract are likely to be greater than your profits in prior years as a sole trader it may be more efficient to operate through a company to avail of the lower taxation rates for corporate tax. If you decide to operate through a company it will need to be registered for taxes in Ireland as explained above the only difference being that rather than an income tax registration a corporation tax registration will be required.

An Irish company is subject to the corporation tax rate of 12.5% on trading profits. You could continue to use this company for any further contracts you have in Ireland. When all contracts are finished you could liquidate the company and extract the profits at capital gains tax rate. As a non-resident you should not be taxed in Ireland on liquidation proceeds of an Irish company that does not derive its value it's from Irish land and buildings.

The only capital gains tax payable should be in your country of residency. There may be an opportunity to claim reliefs on a disposal of shares in a trading company.

If you have any queries in any of the above please do not hesitate to contact me.

Yours sincerely
ADIT Candidate

PART B

Question 3

Part 1

Dividend WHT applies at 25% to dividends and other distributions from an Irish company. However there are a number of exemptions available and the facts and circumstances of each of the shareholders must be analysed in order to establish if an exemption is applicable.

Irish companies that make a dividend distribution are required, within 14 days of the end of the month in which the distribution is made, to make a return to the Irish tax authorities;

- containing details of the recipient of the dividend;
- detailing the reason for any exemption from dividend WHT; and
- to pay over any tax withheld.

In addition, Irish resident companies (or intermediaries) are required to take all reasonable steps to obtain and keep a record of the tax reference number for each person beneficially entitled to receive distributions.

Dividend to Montrachet Benelux Sarl

The exemption in section s172D(3)(b) (i) does not apply as the company is under the control of Irish residents.

The exemption in section s172D(3)(b)(ii) does not apply as the company is not under the control of persons resident in a relevant territory.

The exemption in section s172D(3)(b(iii) does not apply as the company is not listed.

EU Parent Subsidiary Directive – s831

In order to qualify for an exemption from withholding tax under the Parent Subsidiary Directive, Montrachet Benelux Sarl needs to hold at least 5% of the share capital of Beauty Box Ltd (in some cases needs to be held for at least 2 consecutive years). This condition should be satisfied.

However s831(6) provides that Irish companies are still required to withhold tax on dividends where the majority of the voting right in the EU resident parent are controlled by persons not resident in a relevant territory (Ireland is not a relevant territory) unless it is shown that the parent company exists for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose, or one of the main purposes, is the avoidance of tax.

As we are told that the sole reason the Montrachet Benelux Sarl was set up was to benefit from reduced tax rates in Luxembourg on investment income, the Irish Revenue may not allow relief under the EU Parent Subsidiary Directive.

Treaty

In the absence of relief under the Parent Subsidiary Directive and any treaty relief, a 25% withholding tax obligation would arise. However the 2017 OCED Model Tax Convention (Article 10.2) reduces the withholding tax to 5% where Montrachet Benelux Sarl is the beneficial owner of 25% of the Irish company.

Therefore, withholding tax of 5% is likely to apply to the dividend payment.

Beauty Box Limited will have to complete a DWT return within 14 days of the end of the month in which the dividend is paid including details of each of the dividend payments.

Dividend to Beaurive SA

Domestic Legislation – s172D Exemption for payments to certain non-residents.

The dividend payment qualifies for exemption under s172D(3)(b)(i) as it is a company resident in Spain (a relevant territory) and it is not under the control of persons resident in Ireland.

Therefore, provided Beauty Box Ltd receives a declaration from Beaurive SA as required under s172D, then no dividend withholding tax should apply on the payment of the dividend.

Relief would not be available under the EU Parent Subsidiary Directive as the 5% holding requirement is not in place.

Dividend to Cillian Nolan

The dividend payment qualifies for exemption under s172D(3)(a) on the basis that the Australian individual is neither resident nor ordinarily resident in Ireland, is resident in a country with which Ireland has a tax treaty (which includes Australia) and has made a relevant declaration in that regard. No withholding tax should be deducted from the dividend payment.

Treaty

In the absence of relief under the Parent Subsidiary Directive and any treaty relief, a 20% withholding tax obligation would arise. However, the 2017 OECD Model Tax Convention (Article 10.2) reduces the withholding tax to 5% where Cillian Nolan is the beneficial owner of 25% of the Irish company.

Therefore, withholding tax of 5% is likely to apply to the dividend payment.

Bold Beauty Ltd will have to complete a DWT return within 14 days of the end of the month in which the dividend is paid including details of each of the dividend payments.

Part 2

A correlative adjustment arises when the profits of one country are adjusted upwards and as a result the profits of another country are adjusted downwards. Where a correlative adjustment arises profits are doubly taxed i.e. the increased profits in the Italian company will be taxed in both Ireland and Italy unless an additional deduction for this additional commission charge is available to the Irish company. Under Article 9(2) of the OECD Mutual Taxation Convention ("MTC") which deals with Associated Enterprises, where one country imposes a tax on Company A in respect of profits which have already been taxed in the other country as part of Company B's profits, and the other country agrees that, had the parties been dealing at arm's length, the profits would have accrued to Company A, then the other country will make an appropriate adjustment to the amount of tax charged to Company B.

Irish taxpayers cannot take a deduction in their tax return for increased payments to an associated entity arising from a transfer pricing adjustment for which relief may be available under a double taxation agreement ("DTA"). Generally, section 81(2)(o) provides that a deduction would not be available for Bold Beauty Limited on the basis that the additional distribution fee was not incurred wholly and exclusively for the purposes of the trade of Bold Beauty Limited, with relief only be made available if so provided for under the terms of the double tax treaty.

Further, Irish taxpayers cannot amend a tax return to seek a refund of tax arising as a result of a correlative relief claim unless the amount of the adjustment has been agreed in writing between the relevant competent authorities. Section 865(1)(b)(iii) provides that where a refund claim arises because of a correlative adjustment, the claim will only be regarded as valid once the amount of the adjustment is agreed in writing by the competent authorities of the two states.

The implications of these domestic provisions are that an Irish taxpayer's only recourse to secure a corresponding adjustment is pursuant to Ireland's international agreements.

Irish taxpayers can request:

- Correlative relief where the relevant Double Taxation Agreement ("DTA") contains an article equivalent to Article 9 of the OECD Model Convention ("Article 9");
- Relief under the Mutual Agreement Procedure ("MAP") Article of the relevant DTA (all of Ireland's DTAs contain a MAP Article); or
- Relief under the European Arbitration Convention (not applicable in this case).

Relief from double taxation in the case of a transfer pricing adjustment (i.e. a claim for a corresponding or correlative adjustment) must therefore be claimed i.e. relief cannot be taken automatically.

Each of the procedures will require Bold Beauty to present their case to the Irish Revenue Commissioners ("Revenue") as Ireland's Competent Authority ("CA") and provide appropriate supporting information:

- the legal basis for the claim i.e. the relevant article(s) in the Ireland US double taxation agreements (including a statement as to why the agreement quoted is the relevant agreement);
- set out how the relevant enterprises are associated;
- explain what the transfer pricing policy was prior to the audit in the other country (attaching a copy of any documentation evidencing that policy e.g. transfer pricing study, economist report, any other expert advice);

- set out those elements of the transfer pricing policy that the other country did not agree with and why.

It will be necessary to set out how the agreement with Italy was arrived at to include details of:

- how Bold Beauty sought to rebut the assessment;
- the process by which agreement was reached and how such an agreement is justifiable as arm's length;
- the quantum of the adjustment agreed, and the financial years covered.
- an account (if relevant) of the considerations leading to acceptance of a negotiated settlement as opposed to litigation (including, where available, a copy of the legal advice the enterprise received);
- contain a copy of the settlement agreement reached with Italy;
- state whether any previous or subsequent years are to be audited where there is a prospect of similar issues arising; and
- state whether there are audits being undertaken by other countries that might affect the profits of the Irish associated enterprise.

In making a claim it is important to be aware that no relief will be available, inter alia, for:

- interest and penalties imposed by Italy; or
- secondary/repatriation of profits adjustments implemented under the laws of the other country.

If the merits of the claim are accepted, Bold Beauty will be asked to submit revised tax computations for the accounting periods affected in order to compute the quantum of the relief and normally a revised assessment will then issue.
However, claims for relief under these procedures can take two or more years to come to finalisation as the CAs only meet at infrequent intervals. Bold Beauty is not entitled to be a party to the discussions between the Irish CA and the Italian CA and is not guaranteed that the CAs will agree to a position that results in no double taxation. Once agreement is reached Beauty Box Limited should be entitled to a deduction for the amount of the correlative adjustment by virtue of Article 9 of the OECD MTC, which should result in a refund due of the applicable tax rate on the income.

Question 4

Part 1

Ireland is generally a low tax country for corporates but not for individuals. The personal taxation system in Ireland is a progressive system meaning that the more you earn the more you pay in taxes. Tax rates are 20% for income up to €42,000 and 40% thereafter. A personal tax credit and an employee tax credit for those in employment or an earned income tax credit for those in self-employment can reduce the above taxes by €3,550.

As well as income tax universal social charge is payable at progressive rates starting at 0.5% arising to 8% with an additional 3% levy for those who also have self-employed income of over €100,000.

PRSI the social insurance contribution is levied at rates of 4%. This means that the marginal tax rate can vary between 28.5% and 52%.

Part 2

For individuals moving to Ireland have been non-resident for five years under being recruited to a position with an income above €100,000 can avail of relief called SARP - Special Assignee Relief Programme. This exempts 30% of the income above €100,000 from income tax but not from USC or PRSI.

An employee moving to Ireland can avail of split residence relief so they are only taxed in Ireland on employment income after they arrive. Employment income prior to their arrival is not taxed in Ireland.

A non domiciled person moving to Ireland Is not treated as tax resident for capital acquisitions tax purposes until the 6th 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.

Part 3

Transborder Workers Relief available to those who commute to a treaty country for work on a weekly basis. They must have tax deducted and not refunded on their employment income in the other jurisdiction. Employment must last at least 13 weeks. The relief is not available to proprietary directors on the salary from their own company. They must remain tax resident in Ireland.

The relief is based on a formula:

Total Irish tax due x (income other than foreign employment income/total income)Irish income divided by worldwide income.

So if the individual has no other sources of income and is not jointly assessed with a spouse they should have no further tax liability in Ireland on the foreign employment income.

Foreign earnings deduction (FED) is a relief available for those who travel to certain stipulated countries for work. The individual must work in in a relevant state for at least 30 days. The amount of relief is the lesser of €35,000 or the specified amount (which is calculated as the number of qualifying days divided by 365 multiplied by the relevant income).

The relief is from tax only USC and PRSI is not relieved.

The relevant states are Brazil, China, India, Russia, South Africa, Kuwait, Malaysia, Mexico, Oman, Qatar, Saudi Arabia, Singapore, South Korea, Thailand, United Arab Emirates, Vietnam, Columbia and Pakistan.

Part 4

Property acquired between 7 December 2011 and 31 December 2014 is not subject to capital gains tax in Ireland. This relief is available to resident and non-residents . If the property is held for 4 years or up to 7 years full relief is available if it is disposed of after 1 January 2018. The property can be situate in Ireland or any EEA State. Partial relief is available if you dispose of it after 7 years.

Principal Private Residence Relief from CGT is available to residents and non-residents so long as they lived in the property as their main home at some point.

Entrepreneurs Relief from CGT on disposal of an interest in a business or shares in a trading company is also available to both residents and non-residents

Retirement Relief from CGT is available to both residents and non-resident if you satisfy the qualifying conditions, over 55years, owned the asset or shares in a trading company for 10 years, asset used in business or shares in a trading company held for more than 10 years, Working director of the company for 10 years of which 5 were fulltime. Agricultural Property Relief and Business Property Relief from CAT are available to Non-resident as well as residents when it comes to the gift or inheritance of an Irish farm or business.

PART C

Question 5

Part 1

Consideration needs to be given to whether the migration of Lily Limited from Ireland results in an exit charge under Section 627 TCA 1997. Generally, where a company ceases to be resident in Ireland it will be deemed to have disposed of and reacquired all the chargeable assets at market value (i.e. trademark and goodwill in this instance).

This exit charge however does not apply to an “excluded company” i.e. a company of which at least 90% of the issued share capital is held by a “foreign company”. A “foreign company” is a company which is not resident in Ireland, is under the control of persons resident in a DTA country and is not under the control of Irish resident persons or persons directly/indirectly controlled by a foreign company.

Lily Ltd is owned 100% by Dahlia Sarl, which is a French resident company. Dahlia Sarl is not Irish resident, but it is under the control of an Irish resident company and Irish resident persons. Therefore, Dahlia Sarl does not qualify to be regarded as a foreign company and the exemptions under s. 627 do not apply.

Section 628A provides for a deferral, in certain circumstances, of the charge to tax arising under section 627 where a company ceases to be resident in the State. The section provides migrating companies with options to elect to defer the immediate payment of tax arising (i.e. exit tax) where a company migrates its residency to another EU Member State or EEA State. Such migrating companies who wish to defer their exit tax charge are required to make an election on their final tax return.

Part 2

Poppy Ltd is a non- Irish resident company. Section 25(1) TCA 1997 provides that a company which is not resident in Ireland is subject only to corporation tax if it carried on a trade in Ireland through a branch or agency. A company which does not have a branch or agency in Ireland will be subject to income tax on any income derived from sources in Ireland at the standard rate of income tax (25%).

Section 21 of the Taxes Consolidation Act 1997 (TCA 1997) sets the general rate of corporation tax at 12.5 %. That rate applies (subject to certain exceptions set out in Section 21A) to trading income of companies taxed under Case I of Schedule D. Section 3(1) TCA 1997 describes “trade” as including “every trade, manufacture, adventure or concern in the nature of trade”. As the word “trade” is not specifically defined, the term takes on the generally accepted meaning. Guidance as to what constitutes “trading” is available from case law and from a set of rules known as the Badges of Trade. The Badges of Trade were originally set out in the 1954 report of the UK Royal Commission on Taxation Certain types of activity are more likely to be in the nature of an investment rather than a trade. In general, where a company owns an asset and the mere ownership of that asset produces an income, the company’s income from this asset will not be trading income.

Poppy Ltd owns a building in Ireland, but does not carry on activities that would constitute a trade. Poppy Ltd will be subject to income tax @ 25% on the net rental income which is taxed under Schedule 2, case V as per s. 18 (2) TCA 1997. Poppy Ltd should be entitled to obtain a deduction against its gross rental income for the interest expense and any other allowable costs in determining the taxable profit.

As Poppy Ltd is a non-resident landlord, the tenant will be required to withhold tax at the rate of 20% from the gross rents and remit this to Irish Revenue. Therefore, Poppy Ltd will receive only 80% of the rent from the tenant. Poppy Ltd will be entitled to a credit for the tax withheld against the income tax arises on the rents. If the credit exceeds the tax on the rents, Poppy Ltd should be entitled to a refund of the excess. However, if Poppy Ltd appoints the property management company as a collection agent to which the tenant can remit the rent, the tenant would not be required to apply the 20% withholding tax.

Part 3

Domestic legislation provides for a 20% withholding tax rate. We are required to consider whether the double tax agreement between Ireland and Latvia reduces this rate. Article 11 of the Model Treaty deals with interest payments. Paragraphs 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 the recipient carried on business in Country B 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 Saffron Holdings Ltd would be considered to have a permanent establishment in Latvia. We are advised that the interest is a payment from a significant customer and as such the business and as such the interest should be considered "effectively connected" with the permanent establishment. Therefore, paragraph 4 should apply, and no withholding tax is required to be applied to the interest payment.

Question 6

Part 1

With effect for accounting periods beginning on or after 1 January 2019, CFC rules apply that give effect to measures contained in the EU's Anti- Avoidance Tax Directive "ATAD". Subject to certain exemptions, the CFC rules tax an Irish group entity on the amount of undistributed profits of a CFC that can reasonably be attributable to certain activities that are carried on in Ireland.

A 'CFC' is defined as a non-Irish resident company that is controlled by a company or companies that are tax resident in Ireland.

A CFC charge exists where a CFC has undistributed income that can be reasonably attributed to 'relevant Irish activities'. The term 'relevant Irish activities' is broadly defined as being significant people functions (SPFs) or key entrepreneurial risk-taking (KERT) functions performed in Ireland on behalf of the CFC. These functions must relate to the CFC's legal and beneficial ownership of the assets or the assumption and management of the risks. The meanings of SPFs and the KERT functions are aligned with the 2010 OECD Report on Profit Attribution to Permanent Establishments.

Where a CFC charge exists, the chargeable company is the company in which these 'relevant Irish activities' are performed, and the tax rate is dependent on the nature of the income arising. Any foreign tax paid or borne by CFC may be allowed as a credit against Irish tax arising on the CFC charge.

There are several exemptions to the CFC charge, which can be broadly categorised into two main groups:

- Exemptions that exclude a CFC fully from the charge. These include an effective tax rate exemption, profit/profit margin exemptions, an essential purpose test exemption, and an exemption where the CFC has no non-genuine arrangements in place.
- Exemptions that apply to specific income streams of a CFC. These include a transfer pricing exemption and an essential purpose test exemption.

In addition, an exempt period may also apply on the acquisition of a CFC where certain conditions are satisfied.

A CFC that is tax resident in a jurisdiction listed in Annex I of the EU list of non-cooperative jurisdictions for tax purposes will have a number of the exemptions disapplied to it. The disapplied exemptions are the effective tax rate exemption, the low profit margin exemption, and the low accounting profit exemption.

Part 2

Introduction of formal APA programme – The final report on BEPS Action 14 – Making Dispute Resolution Mechanisms More Effective, contains a best practice recommendation that countries should implement bilateral advance pricing arrangement programmes (although this is not a requirement under the Minimum Standard). Recognising the Action 14 recommendation, as well as the need for greater certainty in relation to the taxation of cross-border transactions entered into by multinational enterprises ("MNEs"), Ireland introduced a formal bilateral advance pricing agreement ("APA") program effective from 1 July 2016. Prior to the introduction of the formal programme, Ireland accepted requests for bilateral APAs on an ad hoc basis in situations where a double tax treaty partner has agreed to enter into a bilateral APA negotiation.

The introduction of a formal programme provides certainty to taxpayers with respect to the process involved in applying for a bilateral APA and the ongoing reporting and administrative requirements once an APA has been granted.

The bilateral APA programme only applies to transfer pricing issues (including the attribution of profits to a permanent establishment ("PE")). An application for a bilateral APA may be made by a company which is tax-resident in Ireland for the purpose of the relevant double tax treaty and by a PE in Ireland of a non-resident company in accordance with the provisions of the relevant treaty. The bilateral APA programme is intended to apply in respect of a transaction(s) where the transfer pricing issues involved are complex, e.g. there is significant doubt over the appropriate application of the arm's length principle, or where, for any other reason, there would otherwise be a high likelihood of double taxation arising (in the absence of a bilateral APA). The APA programme is not exhaustive, and inter alia does not cover transactions where are low risk & not complex, as well as multilateral APAs.

Question 7

Part 1

Capital acquisitions tax applies in three different ways. It applies to the worldwide situate assets of the Irish resident or ordinarily resident disponer. It applies to the worldwide assets received by an Irish resident or ordinarily resident beneficiary. And it applies to the ROI situate assets gifted to or inherited by an individual no matter where the disponer or beneficiary are resident.

Part 2

USC can apply to the Irish employment income of an employee who is non-resident for duties carried out in Ireland. An exclusion order can be obtained to avoid deduction of USC for the duties carried out outside Ireland.

Part 3

Irish customs import duty can apply to a non-resident who imports goods valued of more than €150 into the Republic of Ireland. The duty applies irrespective of the residency of the importer. VAT also applies to imports into Ireland irrespective of the value of the import. There are reliefs available for importation of personal goods and temporary admissions of goods.

Part 4

Irish stamp duty applies to documents transferring ownership of property land and buildings shares etc. irrespective of who the property is being transferred to or their residency. The liability arises due to the situs of the asset being transferred and the location where the document is executed irrespective of the residency of the persons involved.

Part 5

PRSI applies to employment income of workers carrying out duties in the Republic of Ireland irrespective of their residency. However, if a claim is made to Scope section of DEASP showing that more than 25% of their duties are carried on outside of Ireland then an exemption can be obtained. In such instance the liability for Social Security contributions moves to the country of residency. A non-resident self-employed person can be exempted from PRSI.

Question 8

Jimmy and Julie will become resident in the Republic of Ireland once they've spent enough time there. 183 days in one year in the Republic at anytime during the day will make an individual resident for that tax year. 280 days over two years in the Republic at anytime during the day with at least 30 in each year will make an individual resident in the second of the two tax years.

If they move part way through a UK tax year they may also be tax resident in the UK for that year.

In a situation where both countries claim tax residency, Jimmy and Julie look to the tax treaty tie breakers to make a determination of the country of tax residence.

The first tiebreaker is permanent home so if there is one permanent home in Ireland then they would be considered resident in Ireland. If they have two homes then you look to the second tiebreaker which is centre of vital interests. If they've moved with their minor children to live and work in the Republic of Ireland and their social and family connections are in Republic of Ireland then they will be considered resident in Ireland.

If Jimmy and Julie sell their home in London after returning to the Republic of Ireland it will be subject to capital gains tax in Ireland but they can claim principal private residence relief under Irish rules for the portion of time that they occupied the house as well as the last 12 months which is deemed occupation.

On the physical move to Ireland they should be aware of the customs procedures when entering the EU. All goods must be declared for customs and VAT purposes at point of entry. Where the goods are personal goods – own vehicle, clothes, furniture etc. they can claim relief from both Customs Duty and VAT. They should email a completed transfer of residence form C & E 1076 to Irish Revenue 2 weeks before the goods arrive in Ireland.

If they bring their vehicle with them, they will need to register it with the VRT office. Transfer of residence relief can be claimed from VRT once they show proof of residence in the UK and proof of ownership of the vehicle for 6 months before they moved.

They will be subject to tax in Ireland on their worldwide income once they become resident. If they move to Ireland part way through a tax year they could claim split residence relief so that employment income earned before arriving in Ireland is not taxed in Ireland.

As a resident of Ireland with foreign income from a UK employment they would be required to return the income under the self-assessment system. If they commute to the employment in Northern Ireland then they can remain on the UK payroll system and claim transborder workers relief in the Republic of Ireland. This would relieve the UK employment income from further tax or USC in the Republic of Ireland.

They would remain in the UK Social Security contribution system as they commute to work and therefore 100% of their duties are carried out in the UK.

If however if they split their time working for the UK employer between working from home and commuting then their employer will be required to set up a payroll in the Republic of Ireland to account for the Irish duties. A dual payroll must be run so that UK duties are tax through the UK payroll and Irish duties through the Irish payroll. A real time tax credit can be claimed so that both UK and Irish taxes are not deducted in full but closer to the relevant proportions.

If 25% or more of their duties are carried out in the Republic of Ireland the full Social Security contribution liability shifts to Ireland. They would be required to pay PRSI on both the Irish and UK portions of their salary. No UK Social Security contributions would be due.

Running a payroll in the Republic of Ireland may have a knock-on effect for the employer in that the presence of employees carrying out duties in the Republic of Ireland runs the risk of creating a permanent establishment of the employer company in Ireland. This could create a corporation tax exposure for the employer company.

Self-assessment tax returns will need to be filed by Jimmy and Julie in the Republic of Ireland returning both the Irish and UK employment income.

They would be better to file the returns on the basis of separate assessment rather than joint assessment so that they can share up to €9,000 of the lower rate tax band and the personal tax credit if one of them has lower income than the other and doesn't fully utilise the tax band and credit. Additionally separate assessment will mean that transborder workers relief should be available in full for either Jimmy or Julie that has a UK employment if that is their only source of income.