THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2023

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.
- 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. “Needless to say, Ireland’s corporation tax regime is a core element of our economic policy mix and a longstanding anchor of our offering to attract FDI”.

Statement by Minster for Finance Pascal on Budget 2023, September 2023.

You are an associate in the Irish office of a worldwide firm of tax advisers. You have been contacted by the finance vice president (FVP) of an American solar energy group based in New Jersey, which is growing rapidly and keen to expand internationally utilising significant debt facilities that are to the group.

The FVP is keen to understand the features and attractiveness of Ireland as a holding company location, for an internationally operated business with foreign subsidiaries throughout the rest of the world.

You are required to prepare a memorandum for the client, addressing the following:

1) The general features of Ireland as a holding company location, as well as its specific features in terms of the taxation of income and capital from foreign subsidiaries, and any considerations relevant to remittances from the holding company to the US parent. (18)

2) Considerations relating to the debt financing of the holding company and its subsidiaries. (7)

Total (25)

2. The growth in remote working since the Covid-19 pandemic has been a major change, both for employers and for employees. It offers numerous benefits, including greater flexibility, less commuting time and savings on office space. However, when the remote working place is the employee’s home and that working place is in a different tax jurisdiction to the employer’s jurisdiction, it creates a new range of issues.

1) Miriam, formerly Irish resident and domiciled, works for a manufacturing firm in France, but in 2020, during the pandemic, travelled back to Ireland to live near her elderly mother. After some time commuting back and forth weekly, Miriam has now decided to stay in Ireland for the foreseeable future.

Miriam’s employer does not want to lose her, and is supportive of this arrangement. The company already has a warehouse in Dublin and has outsourced its warehousing function to a local company. The company has a sales representative in the United Kingdom who covers the UK and Ireland, so Miriam will not be the only employee who is based outside France.

What are the Irish tax implications for Miriam and her employer, of her decision to remain in Ireland? (11)

2) Miriam’s unmarried, long-term partner, Brian, who is UK resident and domiciled, works as a lecturer for a UK university. He is considering relocating permanently to Ireland to live with Miriam.

Brian does not want to leave his role at the university, and has approached them about working remotely and conducting his lectures online. They have asked him to find out the tax implications, both personally for him and for the university as his employer, of his proposed relocation.

Outline the Irish tax implications for Brian and his employer, and any reliefs that may be available. (8)

3) Miriam was previously renting an apartment in France and has decided to give up the lease, while Brian, who owns a home in the UK, is very keen to make the move to Ireland and has put his UK home on the market, hiring a van to move his belongings in two weeks’ time.

What tax planning, if any, should Miriam and Brian do before relocating? (6)

Total (25)

PART B

You are required to answer ONE question from this Part.

3. You are the tax manager in a global tax advisory group. The firm has recently acquired a new, United States-based client, Waterville Resources (Waterville). Waterville is an international electric car company, headquartered in California and quoted on the New York Stock Exchange. It has invested heavily in research and development (R&D) operations over the past two years, evenly split between Ireland and the US, to develop a driverless car, with significant copyrighted software and patented intellectual property (IP) developed.

   The IP is owned under a cost sharing agreement between Waterville US Inc. and Waterville Ireland Ltd in proportion to the expected revenue shares; each party proportionately bears the costs of both R&D and sales and marketing operations, and earns revenues. The group has also made several strategic acquisitions of target companies to purchase their IP, and that purchased IP is also included in the cost sharing agreement.

   Waterville is expected to be able to generate revenue from the car from 1 January 2023 through sales to third party customers via local subsidiaries, with significant profits expected to arise in the first year of sales. Waterville Ireland Ltd will license the IP to various group companies in the EU, as well as several third party distributors, and will receive royalty and licence income in return. It has already concluded several distribution and licence agreements, and is seeking to finalise more before the launch date.

   The US based chief finance officer (CFO) is visiting Ireland for the market launch event in July at the group's flagship, 60,000 space European headquarters in Cork. All 2,000 Irish employees from the R&D, finance and sales functions will be at the event, with senior leadership of the Irish company in attendance. The CFO has asked for a meeting with your firm at the time of event, to discuss tax matters relevant to Waterville Ireland Ltd.

   You are required to prepare the following advice for the CFO:

   1) **An analysis of how Waterville Ireland Ltd's royalty and licence income will be taxed in Ireland.** (12)

   2) **Your advice on any R&D incentives that are currently available in Ireland, as the CFO is concerned that the company is not optimising its use of tax incentives.** (8)

   Total (20)

4. Irish companies are able to employ various tax incentives as part of their approach to the recruitment and management of personnel.

   1) **What benefit can employment tax incentives bring to an employer?** (2)

   2) **Explain three incentives that are included in Irish tax legislation to encourage highly remunerated employees to come to Ireland, or to remain in Ireland. You should explain the mechanisms of each relief, how it is calculated, to whom it applies, how long it lasts, the benefit to the employee, and any special features.** (18)

   Total (20)

PART C

You are required to answer TWO questions from this Part.

5. You are the tax adviser to an Irish publicly quoted company, Twingo plc, which is a global leader in the development of skin injectables such as Botox. Twingo plc has significant cash reserves from years of accumulated profits, and is very active in acquiring new and upcoming companies.

   In 2017 Twingo acquired Jola Inc., a United States-based company resident in Colorado, for $60 million. Jola Inc. had developed its intellectual property (IP) in the US and, shortly following the acquisition, Twingo plc transferred the IP to itself under a royalty bearing licence agreement which enables it to exploit the IP internationally along with the rest of Twingo plc's IP.

   Jola Inc. has been informed by the US Internal Revenue Service (IRS) that the amount it has received under the licence agreement does not, in its view, accurately reflect the economic value of the IP. The IRS has initiated a transfer pricing enquiry and is now issuing a notice of proposed adjustment to the amount of profit recognised by Jola Inc., plus interest and penalties. Jola Inc. immediately informs Twingo Plc of the communication from the IRS and the potential adjustment to Jola Inc.'s profit.

   You are required to advise Twingo plc on the steps that need to be taken in Ireland, to deal with the transfer pricing enquiry directed at Jola Inc. (15)

6. The Court of Justice of the European Union (CJEU) has handed down a number of decisions over the years which have considered the impact of the Treaty on the Functioning of the European Union (TFEU) on provisions of domestic legislation in member states.

   You are required to describe three cases in which decisions of the CJEU have required a change to Irish tax legislation. Briefly summarise the CJEU findings, and the Irish tax legislation that was introduced as a result. (15)

7. Paul and Martin are brothers. Paul is resident in Ireland, while Martin is non-resident having moved to Northern Ireland when he married in 1990. In 1991 the two brothers bought a piece of land in Sligo, Ireland, which was registered jointly in Paul and Martin's names as tenants in common. Stamp Duty was paid on the purchase, and no tax reliefs were claimed.

   Where a property is held by persons as tenants in common, each is the absolute owner of a due proportion of the property. When such a person dies, his or her due proportion of the property is deemed for the purposes of section 573 of the Taxes Consolidation Act 1997 (TCA 1997) to be disposed of to his or her personal representatives. Joint tenants are distinguished from tenants in common in that, on the death of a joint tenant, the right to the whole property passes to the survivors or survivor. Provided the joint tenancy has not been severed, the last survivor of joint tenants becomes the absolute owner of the property.

   The purchase was financed 50% by a loan taken out by Paul and 50% by savings provided by Martin. Paul had no guarantors on his loan. The land was purchased for IR£30,700, equivalent to €38,981.

   The original intention was that Paul would farm the land, while Martin had no intention of farming the land. Other than the transfer of a site into Martin and his wife Monica's names in 2003, the land has been fully utilised by Paul for farming purposes since 1991. Martin and Monica paid the market value for the site at the time, and it was stamped accordingly.

   Paul has farmed the land, along with his own land, since it was acquired. He has operated a suckler cow farm on the land, from which he earns income. Paul has paid no rent to Martin for the use of the land, and has incurred all upkeep costs relating to the land, including fencing, drainage, fertilizer and seeding.

   At this stage in their life the brothers would like to get the title to this land rectified at the Land Registry. They would like the land to be registered solely in Paul's name. Martin does not intend to charge Paul anything for this change. They would also like Martin and Monica's son, Diarmuid, to have a site on the land on which to build a house, should he wish to do so in the future. Diarmuid currently lives in the United Kingdom. Neither Paul nor Martin have received prior gifts under any Capital Acquisitions Tax threshold.

   You are required to answer the following questions:

   1) What are the tax implications of the brothers' proposal? (12)

   2) Are there any alternative ways of viewing the proposal, to minimise the tax due? (3)

   Total (15)

8. Julia is originally from Belfast in Northern Ireland, but has been working overseas as a dentist for a number of years. She now plans to return home, and to set up a company to carry out specialist dentistry work. Julia will be the main person in her business and can run it with one dental nurse and her husband, Josh, carrying out the administration.

Julia was intending to set up her company in Northern Ireland, but has heard that the corporation tax rate is increasing to 25%. A friend suggested that she instead consider setting up the company in the Republic of Ireland (ROI), where the corporation tax rate is 12.5%. Julia has also heard about holding company structures and taking dividends as a way of reducing her person tax burden, but doesn't know how to go about setting up a company that is ROI tax resident.

Julia and Josh would like to live close to Julia's parents in Belfast, but are open to reconsidering this if it makes sense from a tax saving point of view to live across the border in the Republic of Ireland.

You are required to answer the following questions:

1) What is a 'close company'? Explain the tax implications of being registered as a close company. (6)

2) Would the establishment of an Irish holding company change Julia's tax position? (4)

3) What are the tax consequences of receiving income from an Irish company in the form of dividends rather than as a salary, both as a resident and as a non-resident individual? How could Julia ensure that the ROI company is considered ROI tax resident? (5)

Total (15)