THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2016

PAPER 2.06 – IRELAND OPTION

ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

TIME ALLOWED – 3¼ HOURS

You should answer **FIVE** out of the eight questions: **BOTH** questions from Part A; **ONE** question from Part B; and **TWO** questions from Part C.

Part A questions are worth 25 marks each. Part B questions are worth 20 marks. Part C questions are worth 15 marks each.

You should aim to spend approximately half of your exam time answering Part A, and the remaining half answering Parts B and C. The amount of time you spend answering each question should correspond broadly to the number of marks available for that question.

Start each answer on a new page. If you are using the on-screen 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.

All workings should be made to the nearest month and Euro, unless the question requires otherwise.

Marks are specifically allocated for presentation.

PART A

You are required to answer BOTH questions from this Part.

1. "Ireland is committed to actively contributing to the OECD and EU efforts to tackle harmful tax competition."
(*A Roadmap for Ireland's Tax Competitiveness*, Department of Finance, October 2014)

You are a tax manager in the Irish office of a worldwide firm of tax advisers. You have been contacted by the Vice President of an American software business based in California, which is growing internationally. The Vice President has heard that many major technology companies situate their operations in Ireland, and she is keen to understand the attractiveness of Ireland as a location for the holding companies of international businesses.

The Vice President is also aware that the Irish government has announced changes to its domestic legislation as a result of the OECD BEPS project, and is concerned that this may affect Ireland's attractiveness as a holding company location from a tax perspective.

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

1) **How attractive is Ireland as a holding company location? What are the advantages and disadvantages, from a tax perspective, for international companies in basing their operations in Ireland?** (15)

2) **How has Irish domestic legislation been influenced by the OECD BEPS project? Provide a detailed outline of one area relating to BEPS, in which updated or new legislation has been announced.** (10)

Total (25)

2. You have been approached by a colleague, Joseph Grainger, in your firm's UK office. Joseph has asked for your advice on the Irish tax implications for one of his clients, who plans to return to live in the Republic of Ireland. Joseph has provided you with the following background information.

Aidan Flannery, who is originally from Ireland, is retiring to Ireland having lived in the UK for many years. Aidan moved to the UK in 1973, met and married his wife Marion there, and set up home with Marion and their three children in the UK. After many years spent building a construction business in the UK, Aidan has decided to pass on the business and move back to Ireland. Marion was born in the UK to Irish parents who had lived in the UK for many years, and plans to move with Aidan to Ireland. This will be Marion's first period of residence in Ireland. Aidan and Marion's three adult children will remain in the UK. Two of the children own their own businesses, and one is running Aidan's construction company for him.

Aidan has passed most of the shareholding in his construction company to his son, but retains a 15% holding and intends to continue deriving income from it. As well as Aidan's interest in the construction company, Aidan and Marion have several investments in the UK: a share portfolio, two apartments in London, and their own house of residence in the countryside. In addition, Aidan has savings both individually in his own name and jointly with Marion.

Aidan and Marion hope to make the move in May 2017.

Continued

2. Continuation

You are required to provide Joseph with an outline of the tax implications for Aidan and Marion of their move to the Republic of Ireland, which he can include in his report to them. Your answer should:

1) **Explain the tax issues which Aidan and Marion should consider before they move to Ireland.** (15)

2) **Explain any ongoing tax issues which Aidan and Marion will need to address after their move, as residents of the Republic of Ireland.** (10)

Total (25)

PART B

You are required to answer ONE question from this Part.

3.

1) HeadCo Ltd (HeadCo) is an Irish resident trading company with subsidiaries and trading operations in a number of OECD countries, each of which has a double taxation agreement with Ireland. In 2015, HeadCo received the following income from subsidiary companies:

- HeadCo owns a 20% stake in a company in Country A, TailCo Ltd (TailCo). During the year, TailCo paid a dividend to HeadCo. Under Country A's domestic tax legislation, a 30% withholding tax obligation arises on the payment of dividends. HeadCo does not have any other business interests in Country A.

- HeadCo has a branch in Country B. Employees of HeadCo work in Country B, selling computer educational materials and supplies to primary schools. HeadCo has lent money to an unrelated third party company tax resident in Country B, Bear Ltd (Bear), at an annual interest rate of 5%. This is an investment by HeadCo independent of its branch activities in Country B. Under Country B's domestic legislation, a 20% withholding tax applies on interest payments.

- HeadCo owns 100% of a trading company in Country C, FootCo Ltd (FootCo). HeadCo owns intellectual property which FootCo uses for its business. FootCo paid patent royalties to HeadCo in 2015. Domestic legislation in Country C provides for a 15% withholding tax on the payment of royalties. HeadCo charges FootCo a royalty of 10% of net sales whereas it only charges third parties a royalty of 6% of net sales.

You are required to outline the withholding tax obligations for each of the three payer companies, assuming that the OECD Model Tax Convention applies in all cases. You should analyse the relevant articles of the OECD Model Tax Convention in each case. You are not required to prepare any calculations.

a) **What are the withholding tax obligations for TailCo?** (4)

b) **What are the withholding tax obligations for Bear?** (5)

c) **What are the withholding tax obligations for FootCo?** (4)

2) The tax authorities in Country C have audited the tax affairs of FootCo. They consider the royalty charged by HeadCo to be excessive, and hold that a rate of 6% rather than 10% would be a more realistic arm's length rate. As a result, the tax authorities in Country C are disallowing a tax deduction for the portion of the royalty charge exceeding 6%.

Assuming that the OECD Model Tax Convention applies, you are required to consider the impact of this development for HeadCo. You should also consider Irish tax legislation, where applicable. (7)

Total (20)

4. Maped Ltd (Maped) is a Northern Ireland registered company. It has been trading in Northern Ireland for several years and has recently acquired some new customers in the Republic of Ireland. Maped provides health and safety consultancy services to its customers, most of whom are in the construction industry, and also sells some health and safety equipment products. It is likely that the volume of work in the Republic of Ireland will increase with the improving economy, and Maped's directors have also begun considering opening an office in England. Initially, only the Managing Director will spend time in the Republic of Ireland, meeting customers and developing potential opportunities. However, within a short period of time he will require support. Consequently, Maped's directors intend to hire an office employee in Dublin, and to set up a temporary office there. Maped's directors consider the Republic of Ireland market to offer strong potential, and want to ensure that they do not breach any rules relating to tax compliance.

You are required to:

1) **Consider the tax implications for Maped of the proposed move into the Republic of Ireland market.** (8)

2) **Outline the implications for Northern Ireland workers who are posted to work in Maped's Dublin branch.** (4)

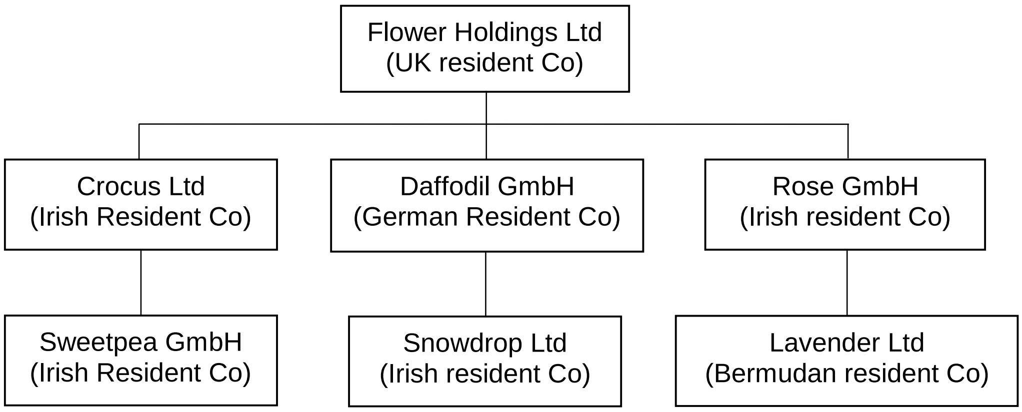
3) **Analyse any suggestions for streamlining Maped's current structure to facilitate future growth and tax efficiency.** (8)

Total (20)

PART C

You are required to answer TWO questions from this Part.

5. Flower Holdings group has operations in a number of different jurisdictions and has recently become a client of your practice. The holding company is owned by ten unrelated individuals, all of whom are tax resident in the UK. None of the companies in the group are considered close companies for tax purposes. The group structure as of 1 January 2015 was as follows, with all subsidiaries 100% owned by the direct parent:



The shareholders have proposed carrying out a number of transactions during the 2015 calendar year and, prior to implementing any of the transactions, the shareholders have requested an outline of the Irish tax implications of each of the following developments for the Flower Holdings group.

- Snowdrop Ltd is currently an Irish tax resident company. However, during 2015 it is intended that Snowdrop Ltd will change its tax residence to Jersey. From that date Snowdrop Ltd will cease to carry on a trade in Ireland. The only chargeable assets held by Snowdrop Ltd are an Irish trademark valued at €530,000 and Irish goodwill valued at €350,000.

- Sweetpea GmbH was previously tax resident in Germany, and migrated its tax residence to Ireland within the last three years. The migration was administered by another tax practice, and the Flower Holdings' group tax partner is waiting for confirmation of the date of migration. In September 2015, Sweetpea GmbH plans to pay a dividend of €1 million out of trading profits to Crocus Ltd.

- Lavender Ltd is tax resident in the Bermuda Islands. It holds a commercial property in Dublin which it acquired in 2013 for €5 million with bank finance. The annual interest on the borrowings is €200,000. Lavender Ltd has been seeking to obtain a tenant for the property since acquisition. Lavender Ltd has recently negotiated a 30-year lease with a software firm, setting up an Irish office at an annual rent of €400,000 and commencing in January 2015.

You are required to set out the Irish tax implications of each proposed transaction and development for the Flower Holdings group, for the year ending 31 December 2015. If applicable, advise how any tax liability for the group may be minimised.

1) What are the Irish tax implications relating to Snowdrop Ltd? (5)

2) What are the Irish tax implications relating to Sweetpea GmbH? (5)

3) What are the Irish tax implications relating to Lavender Ltd? (5)

Total (15)

6. IR Co Ltd (IR), an Irish resident company, is part of a large multinational group. IR owns intellectual property and has entered into licence agreements with approximately 100 customers. IR has ten employees, who are based in Ireland and negotiate the licence agreements with customers on a regular basis.

IR's accounts for the year ending 31 December 2015 show the following results:

Gross royalties	€9 million
Expenses	€4.5 million
Profit	€4.5 million

The €9 million recorded in gross royalties include gross royalties of €3.5 million from a non-treaty country, from which foreign withholding tax of €455,000 was deducted. This is the only foreign tax that was deducted for the 2015 calendar year.

IR also owns two non-trading subsidiaries, Francia SA (Francia), a French resident company and Belco SA (Belco), a Belgian resident company. In the year ended 31 December 2015, IR received a dividend of €100,000 from Francia, with a net value of €100,000 after the application of a 10% withholding tax. The underlying tax rate applied to Francia was 30%. In addition, IR also received a dividend of €200,000 from Belco. The underlying tax rate applied to Belco was 20%. No withholding tax was applied.

You are required to:

1) **Outline IR's Corporation Tax liability for the 2015 calendar year on the royalty income, and calculate the amount of this liability.** (7)

2) **Advise IR of any tax which is payable in Ireland on the dividends received in 2015.** (8)

Total (15)

7. Tim Jones, a UK resident engineer, has recently been offered a contract to work with a large engineering operation in Ireland, for an initial six month period. He has been living and working in the UK for five years, having previously lived in both Australia and South Africa. Tim would welcome the experience he would acquire by working in Ireland, but is concerned about the tax implications of taking on a contract in a different jurisdiction.

Tim currently operates as an Engineer contractor through a limited company in the UK. He has been drawing a relatively low salary, in line with the tax-free allowance in the UK, and supplementing this with dividends drawn from the company on a quarterly basis. Tim's advisers in the UK have informed him that this is the most tax efficient structure in the UK, and he is wondering whether or not both the same structure and his UK limited company can be utilised to carry out the contract in Ireland. Tim operates the flat rate scheme for VAT in the UK, and is concerned about the VAT implications of taking on an Irish contract.

Tim has a wife and one child, who are currently resident in the UK for tax purposes and, although they may not move to Ireland if Tim remains there for only six months, if Tim's contract were to be extended or he was to take on more Irish contracts, they may consider a move to Ireland. Tim's wife is UK resident and domiciled, and Tim foresees that they will reside in the UK or a country commutable to the UK for the foreseeable future, as their child reaches school age and beyond.

Tim has been informed by his UK advisers that as a UK resident he can qualify for Entrepreneur's Relief in the UK, if he were ever to wind up his current contracting company.

You are required to answer the following questions:

1) Tim has asked for your advice in relation to the tax implications of taking on the contract in Ireland, and how this should be structured from a tax efficiency perspective. You should outline different ways of structuring the contract, and the tax implications of each. (12)

2) What are the social security implications of taking on such a contract in Ireland, and how does this differ if this contract is extended or if further contracts are also taken on in Ireland? (3)

Total (15)

8. Michael O'Doherty was born and raised in Ireland, where he studied aeronautical engineering and then worked for a USA company at Shannon airport. In 2014 a job opportunity arose in Luton, in the UK, which Michael accepted. Michael's wife Helena and children remained in Ireland, while Michael commuted to Luton for work.

Michael and his family live in Westport, County Mayo, close to Knock Airport and, as flights between Knock and Luton airports are relatively frequent, Michael's commute to Luton was fairly manageable. At the beginning of the contract, Michael returned home every weekend to see his wife and family. As time went on and Michael's work schedule became increasingly busy, he commuted less frequently. Michael has been an employee of a UK company since July 2014, and all of his earnings are paid under deduction of UK tax.

Michael recently received an offer of some contract work at Shannon airport in Ireland. This would not be full-time employment, but would be advisory work relating to engineering for a Shannon-based company on a self-employed contract basis. Michael is weighing up the options but believes that he could manage both this part time self-employed contract in Shannon and his existing full-time UK employment in Luton.

Continued

8. Continuation

Michael has retained contact with friends and family on a regular basis in County Mayo, and is still a member of a local rugby club there. When in Mayo, Michael attends training sessions and functions of the club. Pictures of these are often posted on social media, which Michael uses to stay in contact with friends and family while away. In order to maintain his fitness levels, Michael joined a rugby club in Luton and has been training with them midweek while working in Luton. He recently organised a challenge match between his clubs in Mayo and Luton, which was very successful and may become a regular fixture.

Since beginning his job in Luton, Michael had spent his time in the UK living in temporary accommodation. However, in early 2015 he acquired a small property as a base to live in which is close to his work. Michael read an article on tax residence in an inflight magazine on one of his commutes, and is now concerned about his taxation position should he take on the contract work in Shannon.

You are a tax manager in a professional practice, and have been approached by Michael for advice relating to his tax residence and the financial implications for him.

You are required to advise Michael with regard to the Irish tax residence rules, and explain the application of these to his current situation. (15)