Answer-to-Question- 1

Dear [----]

I refer to our previous discussions in relation to the estate of Carol Deegan. We have outlined below our detailed analysis.

1. Carol's residence and domicile:

Residence

Irish tax residence rules provide that an individual will be resident in Ireland for a year of assessment (which runs Jan - Dec)if they are present in Ireland for 183 days of that year, or for a combined 280 days for that year and the preceding year.

Carol was in Ireland for all of 2016 and up to the date of her passing on 28th February 2017.

Therefore Carol was resident in Ireland for 2016 under the 183 day rule, and also for 2017 under the 280 day rule.

The US - Ireland DTA provides a tie-breaker test where a person is deemed resident of both countries. However on the basis of Carol's presence in Ireland for all of 2016 and up to 28th February 2017, it is unlikely that this tie-breaker would need to be relied upon.

<u>In conclusion, Carol should be considered resident in Ireland for tax purposes for 2016 and 2017.</u>

For completeness, we should note that Carol would not be considered ordinarily resident in Ireland as she had not been resident in Ireland for each of the three preceding years of assessment.

Domicile

Domicile is a common law concept, established by case law, which is more concerned with a person's permanent status rather than their residence which can change depending on circumstances.

In summary, there are three types of domicile:

- Domicile of birth / origin - usually follows the father's domicile, although it will follow the mother's in certain circumstances
- Domicile of choice - a person's domicile may change during the course of their life depending on circumstances - we review this in further detail below
- Domicile of dependency - a minor's domicile will generally follow the father's domicile

Domicile of choice -

The principles underlying domicile of choice have been established through case law, which provide most importantly that in order to change domicile, there must be two elements - firstly, a change of actual residence of the person concerned, but secondly also an intention to maintain that new residence permanently, for an unlimited period of time.

There are a couple of cases which we should consider here:

Claire Proes v Revenue Commissioners concerned a woman born in Cork, Ireland in 1912. She moved to the UK and married a man there in 1940 and remained in the UK until the 1980's when her husband died. She then returned to Ireland, where she passed away in the 1990's. It was held by the Courts that Carol had acquired a domicile of choice in the UK when she moved there, married there, and built a life there. While she had returned to Ireland, she had not lost the UK domicile which she had acquired. Particularly relevant was the fact that she had looked into buying a property in the UK in order to move back and be closer to her daughters, so the intention to permanently change residence which we refer to above, was absent, and therefore her move to Ireland did not change her UK domicile.

IRC v Bullock concerned a Canadian man who moved to the UK in the early 20th century and joined the RAF. He met and married an Englishwoman and they remained in the UK for the rest of his life, including a change of job from the RAF. When he died, it was found however that he had never acquired a domicile of choice in the UK. The crucial factor was that he had maintained a life long desire to move back to Canada and had hoped to persuade his wife to move there with him. In the event of her pre-deceasing him, he had also planned to move back to

Canada on his own. Again, the lack of intention to create a permanent home - despite a number of years of residence in the UK - meant that he had not acquired a domicile of choice in the UK and his Canadian domicile of birth had endured.

If we apply the above factors to the current situation:

- Carol was an Irish resident before moving to the US in the 1980's. We have not received confirmation of her domicile status but will assume for the purposes of our analysis taht she had an Irish domicile of origin.
- Carol's move to the US and the facts of her life there - including setting up a permanent home, her career, her marriage, and most of all her citizenship in 2004, point towards a intention to permanently reside in the US and it seems clear that Carol would have acquired a new US domicile of choice.
- Carol was then resident in Ireland as we have outlined above. However it is crucial to note that her time in Ireland was necessitated due to her falling ill while in Ireland, and that she had hoped to travel back to the US once she felt well enough to travel. In our view, it is clear therefore that Carol did not acquire an Irish domicile of choice.

<u>In conclusion, Carol should be considered US, not Irish, domiciled at the time of her death.</u>

2. Irish inheritance tax on the assets of the estate

Irish Capital Acquisitions Tax applies to both gifts and inheritances.

It's worth noting firstly that Irish CAT will in general apply to the full estate, where the disponer is resident or ordinarily resident at the date of the disposition. However, there is an exception to this where the disponer is not domiciled in the State.

Where the disponer is not domiciled in the State, they are treated as not resident for CAT purposes unless they have also been resident in the State for 5 consecutive years preceding the relevant year of assessment.

On this basis, Carol is treated as non-resident for Irish CAT purposes and Irish CAT will not apply to the estate on the basis of pure residency.

However, certain portions of the Estate may still be subject to CAT where they are Irish situate or where the recipient is Irish resident or Irish ordinarily resident.

(i) Three US friends receive $10,000 each - This should not be subject to Irish CAT on the basis that the friends are not Irish resident and that the funds should come from Carol's US rather than Irish bank account.

(ii) Bruce - US citizen and likely US resident on the basis of facts provided.

Bruce would in the first instance be subject to Irish CAT at a rate of 33% on any Irish situate assets. However an exemption exists which exempts any inheritance between spouses from CAT.

(iii) Nuala - resident in the US

Nuala should be subject to CAT only on Irish situate assets (i.e. the Dublin apartment and the Irish bank account) at the rate of 33%. A deduction should be available in relation to a pro-rata amount of estate expenses. Nuala will also be able to avail of a threshold of E32,500 which may be inherited free of tax.

(iv) Cathal - resident in Ireland

As an Irish resident, Cathal will be subject to Irish CAT at a rate of 33% on the full share of his inheritance, both Irish and US. However, the US -IE DTA Art 4 may provide that no inheritance tax will apply on non Irish property given that Carol was non Irish domiciled. As with Nuala, he may avail of the sibling threshold of E32,500.

It is worth noting that stamp duty or CGT do not apply where assets are acquired through inheritance

3. US inheritance tax and DTR

As the US imposes federal estate tax on worldwide assets where the disponer is a US citizen, US federal estate tax should apply to the full estate.

This will lead to double taxation in the case of Nuala and Cathal.

There is a double tax convention on CAT between the US and Ireland. Article V will apply in the case of Nuala and Cathal - it provides that where there is US inheritance tax suffered in relation to the Irish property, there will be a credit availabile against US tax suffered, for the Irish tax suffered on the same property.

Note that in order for DTR to apply under the treaty, the tax must arise as a result of the same triggering event. In this case it seems clear that the triggering event is Carol's death.

4. Pre-Death taxes

Pre death taxes may arises in Ireland for Carol as follows:

As an Irish resident, but not ordinarily resident or domiciled, Carol would be subject to Irish tax on the following:

- Irish source income
- Income arising from a trade, profession or employment carried on in Ireland
- Foreign income, to the extent that it is remitted to Ireland.

Applying this to Carol's position in 2016 & 2017:

- Irish rental income would be subject to tax at the marginal rate under Case V, with USC also applying. Deductions available for standard Case V expenses and up to 75% of any mortgage interest incurred.

- Note that for the portion of time that Carol was non resident in Ireland (i.e. pre 2016), under S1041 the tenant of the apartment would have been required to withhold tax at the standard rate of 20% from rental payments, unless a local agent had been appointed, in which case the withholding tax could be dis-applied through Form 158. Income tax would have applied to the rental income at the standard rate of 20%.

- Deposit interest would be subject to DIRT at a rate of 33% for Irish residents. When Carol was not resident here, she could have applied for a DIRT exemption as a non-resident under S263.

- US Pension - this would only have been taxable in Ireland to the extent remitted here.

- US investment income and deposit interest - only taxable in Ireland to the extent remitted here.

5. Income or capital gains taxed arising to beneficiaries after Carol's death:

Bruce & Nuala - subject to Irish income tax on rental income from the apartment as outlined above - 20% rate - deduction for standard Case V expenses and 75% of mortgage interest. May apply for DIRT relief from interest on Irish bank accounts as non residents. A future disposal of the apartment would lead to Irish CGT at 33%. As non residents and non-Irish domiciles, Bruce and Nuala should not liable to Irish CGT on the disposal of the apartment as under S29(3), non resident and non ordinarily resident persons are only subject to Irish CGT on land, minerals, assets used by an Irish trade, or shares deriving their value from the above.

Cathal - will be subject to Irish income tax on rental income in line with previous treatment which applied to Carol - i.e. income tax at marginal rate and USC. Will be subject to Irish DIRT on Irish interest income.

Will be subject to CGT on any future disposal of the apartment, with the base cost being the market value of the the apartment at the date of inheritance. As an Irish resident, Cathal will be subject to tax on his worldwide income so he will also be subject to Irish tax on any future US income arising from the estate.

Please just let us know if you have any queries or require any further information in relation to the above.

Kind regards

[-----]

---------DO-NOT-EDIT-THIS-DIVIDER----------

Answer-to-Question-2-

Memo in relation to Irish Tax Measures affecting inward investment decisions in Ireland.

Introduction:

The international tax environment continues to be the subject of intense focus in 2017, with a number of areas driving change, including not least:

- OECD BEPs project
- EU's Anti-Tax Avoidance Directives
- US Tax Reform
- Brexit

Ireland has been extremely involved in international progress in this area and is committed to maintaining a tax regime which fosters sustainable growth. As you are aware, Ireland's headline 12.5% tax rate has been in place since 1999 and despite some challenges, successive Irish governments from both major parties have re-affirmed their commitment to this rate.

In addition to this low corporate tax rate, which is available to trading companies, Ireland has consistently worked to improve its corporate tax offering and also to quickly implement changes which are required or recommended out of processes such as the OECD BEPs project. Ireland is very pro-active in implementing measures required to maintain its reputation as a low tax, transparent regime. In recent years, this has been particularly visible through a number of successive Finance Acts:

- Finance Act (No.2) 2013 & FA 2014 - Changes to Irish corporate tax residence rules to eliminate the concept of "stateless companies" due to mismatches in tax residence rules internationally

- Finance Act 2015 - Introduction of new Knowledge Development Box regime - the first to be compliant with new OECD standards regarding the “modified nexus approach”

- Finance Act 2016 - Introduction of Country by Country Reporting in line with new OECD standards - Ireland was one of the first countries in the world to implement this.

- Ireland has also made a number of changes in recent years to its “SARP” regime - special assignment relief programme - in order to enhance the offering for MNC’s assigning people to Ireland.

I have provided below some further detail in relation to each of these measures.

S23A - Irish corporate tax residence rules

Prior to the changes in 2013 & 2014, Irish tax residence rules provided that a company whose “central management and control” was exercised in Ireland was tax resident in Ireland.

A number of countries, including the US, use an incorporation test for tax residence. A number of high profile MNC’s used this mismatch to their advantage by incorporate a company in Ireland, and then ensuring that it was managed and controlled from elsewhere, resulting in a “stateless company” - i.e. one that was not tax resident in any jurisdiction.

Issues like these are at the core of the OECD BEPS project.

Ireland changed its rules in 2013 and 2014 and the new tax residence provisions provide that a company will be tax resident in Ireland (i) where it is incorporated in Ireland or (ii) where it is centrally managed and controlled in Ireland. The only exception to the above is that an Irish incorporated company will not be deemed tax resident solely on the basis of its incorporation here, if it is deemed resident in another territory under a double tax agreement in place between Ireland and that territory.

This provision applies to all companies incorporated from 1 Jan 2015 from 1 Jan 2015. For companies incorporated before that time, the provision applies from 1 Jan 2020, allowing those companies time to deal with the new provisions and their implications.

Knowledge Development Box

The Irish knowledge development box is the first in the world to comply with new OECD guidance on the modified nexus approach.

This OECD approach seeks to move away from the historic approach which was to align profits with the legal and economic ownership of IP. Instead, the modified nexus approach seeks to align profit with actual substance and activity by focusing on the “DEMPE” functions - i.e. the development, enhancement, maintenance, protection and exploitation of that IP - in other words, the IP follows the skilled people who actually create, protect, and exploit the value that is in that IP.

The knowledge development box provides for an effective 6.25% corporation tax on all profits arising out of IP which is developed in Ireland in line with the above principles.

This is in addition to the existing R&D regime which provides for an effective 37.5% tax credit on qualifying R&D activities. Then, if those activities are successful and give rise to valuable IP which is also managed and exploited from Ireland, the KDB regime will apply to profit arising from that IP.

Country by Country Reporting

Ireland was one of the first countries to implement CbCR. It comes into effect for fisal periods ending in 2016, with the first notifications due to Irish Revenue by 31.12.2016 and the first CbCRs due by 31.12.2017. This applies to all MNC’s with turnover in excess of E750, in line with OECD guidelines, which have Irish ultimate parent companies, and also applies in a number of other scenarios which are detailed in the regulations.

The CbCR must include specific information - again in line with OECD guidelines - including aggregate revenue, profit or loss before tax, income tax paid and accrued, stated capital, accumulated earnings, number of emplyees, and tanigble assets, along with details of subsidiaries, the nature of the main business of each entity and the jurisdiction of each entity. The CbCR, in line with OECD guidelines, will then be shared with all signed-up tax authorities for each territory in which a subsidiary is resident.

Ireland has not yet implemented regulations in relation to master files and local files.

However existing Irish TP legislation already provides that contemporaneous TP documentation should be in place for all related party transactions, at the time of filing a tax return, in order for that tax return to be considered complete.

SARP regime

Ireland's SARP regime was introduced in Finance Act 2012 and has had changes and improvements made to it in the intervening years. Broadly speaking, it provides for a 30% reduction in income which is subject to tax for assignees into Ireland, where their income is over E75,000. A number of conditions must be met in order for the relief to apply and there is a cap of E500k on the income which may qualify.

In addition to the above, Ireland has shown its commitment to the international work on tax through many additional measures:

- Signing up to EU ATAD July 2016. Ireland already has a number of the measures required under ATAD in place for a number of years (e.g. interest deductibility rules and general anti avoidance rules) however it will bring in new rules to deal with hybrids and CFC requirements from 1.1.2019 in line with the ATAD requirements.
- Signing up to ECOFIN dispute resolution measures
- Signing up to OECD's multilaterial instrument in Paris in June 2017
- Continuing to expand its international tax treaty network (currently 72)
- Improving its already best in class R&D tax credit regime

...as well as maintaining its position as one of the easiest countries to do business in globally, one of the easiest countries in which to pay tax (including Revenue's Online System which continues to improve and is already viewed by many EU counterparts as one to follow).

I hope the above is informative and please don't hesitate to let me know if you require further information on any of these measures.

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Answer-to-Question-4-

1. Tax implications of opening office in RoI to service Irish customers

Income Tax

- Edward would be a sole trader in Ireland
- Opening an office in RoI is likely to constitute a permanent establishment under Article 5 of the OECD MTC.
- Edward would be subject to Irish income tax, USC, and PRSI on any income earned in Ireland

Employees

- Any employees spending more than 183 days in Ireland would potentially be deemed tax resident in Ireland and would need to account for Irish tax on their earnings. A credit should be available in Northern Ireland for any RoI tax suffered. Cross border worker relief applies in Ireland for certain assignemnts within the EU or treaty territories, however we cannot comment on whether a similar relief exists in the UK.
- Where employees are likely to be in Ireland for more than 183 days, as seems likely in this case, Edward will also have Irish PAYE obligations. He will be required to register as an employe and deduction PAYE, USC and PRSI from employee pay which is related to their Irish duties.

VAT

- From a VAT perspective, the provision of graphic design type services in Ireland is subject to a rate of 23%. There is a services threshold of e37,500 before registration is required, however this does not apply in the case of a non-established person therefore Edward would be required to register for Irish VAT and account for VAT on sales at 23%. Edward will be entitled to input VAT credit for any costs incurred in connection with the Irish business. Irish VAT returns

Social security

Generally, social security is payable in the place where the employee exercises their duties. Where employees are transferred within the EU, they may apply for an A1 certificate which means they can stay within their "home" system for a period of up to five years. The EU also has rules on multi-state workers which provides that where a person works across two or more EU states, they may continue to pay into the social security system of their residence state where at least 25% of their duties are carried out there.

Administration

All Irish tax compliance obligations are met through Revenue's Online System.

Form 11 for income tax for employees - due by 31 Oct of following year - payment is 100% of prior year or 90% of current year by 31 Oct, with the balance (if any) payable by the following 31 Oct.

VAT returns are filed bi-monthly and are due with payment by the 23rd of the following month. Intrastat and VIES returns may also need to be filed if goods and services are travelling cross border.

PAYE P30 returns are due monthly by the following 23rd, and the P35 annual return is due by the following February.

2. NI company with activities in the company

Edward's NI company would be taxable at the NI rate of tax. The activities in Ireland would again likely constitute a permanent establishment, i.e. a branch of the company.

Irish branch profits, which should be attributed in line with the 2010 OECD report on attribution of profits to PEs, would be taxable at the Irish trading rate of 12.5% (assuming trading, which seems likely based on the information provided), and these profits would also form part of the profits of the NI company. However a credit should be available in NI for any tax suffered in RoI on the branch.

Edward would be required to register the presence of a branch with the Irish companies office and register for Irish corporation tax.

Admin - CT payments for a 31.12.2016 year end are due on 23 June 2016(45% current year or 50% prior year), 23 Nov 2016 (bring total to 90% current year, and 23 September 2017 - bring total to 100%. The CT return also needs to be filed by 23 Sept 2017. This should be prepared on the basis of management accounts for the branch.

The VAT implications would be largely unchanged from Option 1.

PAYE implications for employees remain similar to Option 1.

3. RoI company

Where an RoI company is established, this will need to be registered with Irish Revenue in line with Option 2 above.

However the notable difference here is that any RoI company profits would be taxed in RoI at 12.5%, and would not be taxable in NI unless remitted.

Assets would need to be transferred to the Irish company. If transferred from a branch (i.e. from Option 2), this should be exempt under S615.

Repatriation of profits - Irish dividend withholding tax (usually 20%) should not apply on payment of dividends to an EU member state.

VAT and PAYE implications are as above. Where employees are transferred, TUPE regulations should apply for a relatively seamless transfer.

4. Brexit implications

- Changes to VAT, cross border rules
- Potential customs issues
- Potential impact on repatriation of profits for Option 3
- Potential changes to UK tax law

- Increase in costs and fluctuation of FX likely
- Logistical issues if a hard border returns between NI and RoI
- Potential loss of EU member state benefits, including withholding tax exemptions

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---------DO-NOT-EDIT-THIS-DIVIDER----------

Answer-to-Question-5

1. ICI v Colmer

This was a UK case which was taken to CJEU. The taxpayer was unable to claim group relief as holding companies within the group were located outside of the EU. CJEU held that for the purposes of ascertaining a group in order to provide tax benefits such as loss relief, intermediary and ultimate holding companies within the EU had to be taken into account.

Ireland's group and loss relief legislation was amended to reflect this judgment. S411 now provides that holdings by EU countries may be taken into account in determining an Irish group for group relief purposes.

2. Marks & Spencer

In this noted case, Marks and Spencer contested the lack of UK loss relief available in relation to approx 30m losses arising in its French, Germany and Belgian subsidiaries and argued that this was contrary to two of the EU fundamental freedoms - i.e. freedom of establishment and free movement of capital.

The UK argued that while there were limitations on those freedoms, they were defensible on the basis that:

- MNC's would otherwise engage in extreme tax avoidance and shifting profits and losses between low and high tax jurisdictions

- It would interfere with a member state's sovereignty on tax matters
- There was a risk of companies "double" utilising losses in more than one country.

CJEU agreed that certain limitations were defensible on a number of the grounds put forward by the UK, but said that the UK's total prohibition on loss relief in this instance was indefensible. This could have been a watershed moment in terms of EU group losses, however the court put forward a number of limitations in relation to the availability of loss relief which denies it in all but very limited circumstances - there must be no possibility that relief can be obtained in the home country for those losses, so there must be no carry forward, or no group relief, or the company has been wound up. In practice this has meant the judgment has not had a huge impact.

Ireland's group relief losses legislation was updated at S411 was updated at s411(2)(b) to allow for trading losses incurred by non-resident companies and other amounts not otherwise eligible for relief from corporation tax.

3. FII GLO

This was a group action taken by a number of UK companies which contested the UK's treatment of foreign vs domestic dividends.

Similar to Ireland's treatment, the UK treated domestic dividends as Franked Investment Income, exempt from tax. Foreign dividends were treated as taxable. Grounds for contesting this were that it was contrary to EU freedoms on establishment and capital.

CJEU noted that the UK treatment was not in line with EU freedoms and noted that the legislation would need to be updated to ensure that dividends from EU countries were not treated any less favourably than dividends from UK companies.

Ireland's regime was very similar to the UK's and therefore when the judgment was released, Ireland quickly moved to change its treatment to be compliant. This resulted in the introduction of S21B TCA1997, which provides that certain dividends paid out of trading profits from, among others, EU companies, may avail of the 12.5% trading rate upon election. Non-trading dividends continue to be taxable at 25%. A credit may be available for foreign WHT and foreign underlying tax suffered on dividend.

---------DO-NOT-EDIT-THIS-DIVIDER----------

Answer-to-Question-7

1. Residence and Domicile Rules in Republic of Ireland

Residence

Irish tax residence rules provide that an individual will be resident in Ireland for a year of assessment (which runs Jan - Dec)if they are present in Ireland for 183 days of that year, or for a combined 280 days for that year and the preceding year.

It's worth noting that the rules were changed in 2009 so that where an individual is present in the State at any time during the day, that day counts towards the 183 or 280 days - replacing the previous "Cinderella" situation.

Ordinary Residence

Where an individual is tax resident in Ireland for 3 consecutive years, he or she acquired ordinary residence the following year. That individual will then remain ordinarily resident in Ireland until they have not been resident in Ireland in each of the 3 years of assessment preceding that year.

Domicile

Domicile is a common law concept, established by case law, which is more concerned with a person's permanent status rather than their residence which can change depending on circumstances.

In summary, there are three types of domicile:

- Domicile of birth / origin - usually follows the father's domicile, although it will follow the mother's in certain circumstances
- Domicile of choice - a person's domicile may change during the course of their life depending on circumstances - we review this in further detail below
- Domicile of dependency - a minor's domicile will generally follow the father's domicile

Domicile of choice -

The principles underlying domicile of choice have been established through case law, which provide most importantly that in order to change domicile, there must be two elements - firstly, a change of actual residence of the person concerned, but secondly also an intention to maintain that new residence permanently, for an unlimited period of time.

There are a couple of cases which we should consider here:

Claire Proes v Revenue Commissioners concerned a woman born in Cork, Ireland in 1912. She moved to the UK and married a man there in 1940 and remained in the UK until the 1980's when her husband died. She then returned to Ireland, where she passed away in the 1990's. It was held by the Courts that Carol had acquired a domicile of choice in the UK when she moved there, married there, and built a life there. While she had returned to Ireland, she had not lost the UK domicile which she had acquired. Particularly relevant was the fact that she had looked into buying a property in the UK in order to move back and be closer to her daughters, so the intention to permanently change residence which we refer to above, was absent, and therefore her move to Ireland did not change her UK domicile.

IRC v Bullock concerned a Canadian man who moved to the UK in the early 20th century and joined the RAF. He met and married an Englishwoman and they remained in the UK for the rest of his life, including a change of job from the RAF. When he died, it was found however that he had never acquired a domicile of choice in the UK. The crucial factor was that he had maintained a life long desire to move back to Canada and had hoped to persuade his wife to move there with him. In the event of her pre-deceasing him, he had also planned to move back to Canada on his own. Again, the lack of intention to create a permanent home - despite a number of years of residence in the UK - meant that he had not acquired a domicile of choice in the UK and his Canadian domicile of birth had endured.

2. Treaty provision for determining tax residence in cases where there is doubt

The OECD MTC Article 4 provides for a tie-breaker test in cases where an individual is resident of two Contracting States.

Firstly, if he has a permanent home available to him in only one of the States, he is deemed resident in that State.

If he has a permanent home available in both States, he is deemed to be a resident of the State with which is personal and economic relations are closer - i.e. the “centre of vital interests”.

If the centre of vital interest cannot be determined, he is resident only of the State in which he has a habitual abode.

If he has a habitual abode in both or neither State, you then look to the State of which he is a National.

If he is a national of both states, the competent authorities will settle the matter by mutual agreement.

In practice, some of the factors which are taken into account in determining the vital interests and habitual abode are:

- location of work duties, if any
- where are bank accounts located
- club and sports memberships
- location of doctor and dentist

3. John’s residence and domicile

<u>Domicile</u>

(i) Born in Argentina to Argentinian father - so domicile of origin is Argentina as it follows the father.

(ii) Significant movement throughout childhood and early adulthood. However as outlined above, change of residence in itself is not enough to change domicile - it must be accompanied by an intention to be permanently resident in that new country for an unlimited period of time. The purchase of a house in Brussels may have pointed towards this but in the absence of further information on intent (future plans, permanent arrangements including burial plans, if any), we cannot be conclusive on whether his domicile changed at any point.

(iii) Movement to Ireland - a number of factors point towards John acquiring a domicile of choice in Ireland although it is not conclusive without further information:

- Irish family links
- Irish passport application
- Irish driving licence
- House in Dublin (but note also has an apartment in New York).

Information on John's intentions and permanent plans would be helpful in order to determine whether his domicile has actually transferred to Ireland. On the basis of current information, it is likely that it has bu the matter is not free from doubt.

Residence

_____John spends at least 180 work days in the United States in any given year and therefore there is a risk of US residence, with onerous tax payment and filing obligations.

John should also be regarded as Irish tax resident under domestic rules as even if he does not meet the 183 day one year rule, he is likely to meet the 280 day 2 year rule.

If we follow the tie-breaker rules in the OECD MTC as outlined above:

Permanent home - both countries.

If he has a permanent home available in both States, he is deemed to be a resident of the State with which is personal and economic relations are closer - i.e. the "centre of vital interests".

It is very arguable that John's central of vital interests are in Ireland. He has family ties here through his mother, and his Dublin home is closer to his child Augustin. His Irish passport and driving licence are also helpful factors regarding Ireland being his centre of vital interests. However for completeness we will assume that the centre of vital interest is inconclusive.

If the centre of vital interest cannot be determined, he is resident only of the State in which he has a habitual abode.

John has a habitual abode in both States, so finally we would look to the State of which he is a national. Given his Irish passport, this should give a conclusive answer that John is Irish resident.

4. Remittance basis of taxation

The remittance basis of taxation for non-domiciled individuals is set out in S71 (re income) and S29 (re CGT).

In the absence of these sections, a resident would be subject to tax on worldwide income and gains, and an ordinarily resident but non resident individual would be subject to tax on worldwide other than a foreign trade, foreign employment, or other income of less than E3,810.

S71 provides that tax on the foreign income of a non domiciled individual will be calculated based on the full amount of the actual sums received in the State, from remittances payable in the State, and in a number of more detailed situations.

In addition, S72 widens the scope of the "remitted funds" by bringing into scope any funds applied outside the state, in satisfaction of debts loaned within the State, and a number of similar situations.

S29 provides that tax on chargeable gains will only be calculated on the basis of the amount received in the State in respect of those chargeable gains, and the gains are treated as accruing when those amounts are received in the State.

It's worth noting that a non domiciled individual will still be subject to Irish CGT on specified assets - e.g. Irish land, minerals, assets of an Irish trade, and shares derving their value from same.

Remittance basis - planning

In order to plan for this, individuals for whom the remittance basis of taxation is relevant are advised to ring fence their funds while in Ireland, having two separate funds for capital and income amounts. Any income remitted will be taxable. Any capital remitted, which does not relate to a chargeable gain arising from when that individual was subject to CGT in Ireland, will not be taxable. Where the funds are mixed, Irish Revenue will treat the first remittances as being from income until all income is used up, therefore the ring fencing provides tax efficiency.