THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2017

PAPER 2.06 – IRELAND OPTION

ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

TIME ALLOWED – 3¼ HOURS

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

You need to answer **five** questions in total.

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.
- Start each answer on a new page and clearly indicate which question you are answering. 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.
- Marks may be allocated for presentation.
- 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 Parts B and C.
- The first 15 minutes of the exam consists of reading time. You will be allowed to annotate the question paper during this time; however, you will **not** be permitted to start writing or typing your answer, or use a calculator. The Presiding Officer will inform you when you can start answering the questions.

PART A

You are required to answer BOTH questions from this Part.

1. You are a tax adviser working in practice, and a new client case has been given to you. The file summary which you have been given is as follows:

Carol Deegan was an Irish resident who moved to the United States in the 1980s. She met and married her husband Bruce, a US citizen, in 1990. Carol acquired US citizenship in 2004.

Carol worked as a law professor, and was head of law at an American University for several years. She contracted a serious illness and ultimately retired on ill-health grounds in October 2010. Following successful treatment, Carol was in sufficiently strong health to travel and returned to Dublin to visit family regularly. From 2010, she spent three to four months each year in Dublin.

In October 2015, while in Dublin, Carol fell ill again and was diagnosed with a terminal illness. She remained in Dublin, and Bruce travelled frequently between the US and Ireland in order to be with her. Carol hoped to travel back to the US once she felt well enough to travel, but died in Dublin on 28 February 2017 without having returned to the US.

Carol made a will with a firm of solicitors in Dublin, in December 2015. The will names six beneficiaries in total:

- Three US friends, to receive amounts of $10,000 each;
- Bruce; and
- Carol's two surviving siblings, Nuala and Cathal. Nuala is resident in the US and Cathal in Dublin.

The estate consists of the following assets:

<u>Irish Assets</u>	<u>Market Value</u>
Apt 66C, Rethington Road, Dublin This apartment has been rented continuously since it was acquired in 2010 and produced rental income of €1,700 per month. It was managed by a letting company for a fee of €650 per year.	€350,000
Fixed rate 3% deposit account held with an Irish bank	€35,113
Current account held with an Irish bank	€10,010
<u>Liabilities</u>	
Funeral expenses	€5,496
Miscellaneous, including legal fees, etc.	<u>€20,000</u>
Net value of Irish assets – circa	€369,627

Bruce, Nuala and Cathal to share equally in Irish assets.

Continued

1. Continuation

US Assets	Market Value
New Jersey condominium Jointly owned with Bruce, who inherits it by survivorship	$415,000
Shares in a publicly listed US company	$8,500
US bank deposits	$100,030
Life insurance paid to husband Bruce	$30,000
Life insurance paid to Nuala and Cathal as named beneficiaries ($25,000 each)	$50,000
Liabilities	
Mortgage on condominium - responsibility of Bruce	est. $75,000
Wake expenses in New Jersey	$2,289
Net value of US assets	circa $446,241

Three friends to receive $10,000 each.

Husband and two siblings to share equally in the residue.

The US imposes federal estate tax on worldwide assets if the disponer was a US citizen or was domiciled in a US state; otherwise, only property situated in the US is liable to federal estate tax.

You are required to provide the executors of Carol's estate with a report, explaining the tax implications of the estate. Your report should include the following, although you are not required to provide detailed computations of tax liabilities:

1) **Commentary on the residency and domicile of Carol, and how this could impact on the taxation of the estate.** (5)

2) **An explanation of the Irish inheritance taxation of the assets in the estate.** (5)

3) **Details of any double taxation relief which may be applicable to the inheritance taxes.** (5)

4) **An outline of any pre-death taxes that may arise in Carol's case.** (5)

5) **Commentary on any income or capital gains taxes that could arise to the beneficiaries after Carol's death.** (5)

Total (25)

2. “The primary goals of the Corporation Tax policy of the State are to foster a sustainable business environment that stimulates investment and thus the creation of jobs, and to raise revenue to fund the running of the State.

Our headline rate of 12.5%, our competitive regime, and our commitment to the OECD Base Erosion and Profit Shifting (BEPS) process, have been fundamental in achieving our corporate tax policy objectives over the last number of years. However, in the face of an ever evolving international tax landscape, it is imperative that Ireland maintains its commitment to sustaining an attractive corporate tax regime that promotes genuine substantive investment.”

Irish Department of Finance Tax Strategy Group, 19 July 2016

You are the Tax Manager in the Irish subsidiary of a multinational corporation which is headquartered in the US. You are required to prepare a memorandum to the Vice President of Tax in the US, discussing the measures which have been introduced in successive Irish Finance Acts in recent years which could influence inward investment decisions in Ireland.

Your memorandum should address the extent to which any changes have been influenced by the OECD BEPS Project. (25)

PART B

You are required to answer ONE question from this Part.

3. Duke Group is an international pharmaceutical group listed on the New York Stock Exchange with operations in the United States, France, Germany and the United Kingdom. Duke Group has extensive research and development (R&D) operations and has successfully received regulatory approval for the sale of a series of life-saving drugs. Intellectual property (IP) for the group consists of valuable patents and brand names. The IP is owned under a cost-sharing agreement by a US company, and a company resident in the Cayman Islands, with the IP ownership split in proportion to the reasonably expected benefits.

Following some negative press due to the ownership of IP in an offshore location, Duke Group is considering alternatives to the current IP ownership structure. It is considering setting up an Irish company (Irl Co) and proposes to transfer the existing IP to Irl Co. Irl Co will be 100% owned by a Swiss Co which is in turn 100% owned by a US Co.

Following the transfer, Duke Group intends to license the IP from Irl Co to various US and EU group companies, and Irl Co will receive royalty payments in return.

As the group is engaged in extensive research and development operations, Duke Group needs to ensure that cash is available for the funding of same. Duke Group intends that Irl Co will make annual dividends to the Swiss parent.

1) You are an International Tax Manager with a tax advisory firm and have been requested by the chief financial officer (CFO) of Duke Group to advise on the Irish Corporation Tax considerations relating to the proposed transfer of the IP to the Irish company and the licensing of the IP to group companies.

The CFO wants this transfer to be effected as tax efficiently as possible; your advice should therefore consider any steps required in order to minimise tax costs. You are not required to consider the outbound tax costs of the IP transfer from the US. (12)

2) Advise the CFO of the Irish tax implications of an annual dividend to Swiss Co. (5)

3) The CFO has enquired as to the legal standing of Ireland's applicable double taxation agreements, and you are required to briefly describe the position of these. (3)

Total (20)

4. Edward Murray is a self-employed graphic designer, resident in Northern Ireland. He carries out a lot of corporate design work on logos and rebranding, and has customers based in both the Republic of Ireland and the United Kingdom. Edward's business has grown rapidly and he now has four employees working with him on the design side of the business. These are all currently on his UK payroll, but are spending an increasing amount of their time on Irish projects for which they have to travel to visit customers in Ireland.

   Edward is considering setting up an Irish base and is concerned about the tax implications of doing so.

   1) **You are required to outline the Irish income tax, VAT, employer tax and social security implications for Edward of opening an office in the Republic of Ireland to service the Irish customers.** (8)

   2) **How would your answer to (1) differ if Edward incorporated a company in Northern Ireland, and all activities were moved into the company structure?** (5)

   3) **Outline the Irish tax implications of setting up a subsidiary of the Northern Ireland company in the Republic of Ireland.** (5)

   4) **What potential implications might Brexit have on Edward's business?** (2)

Total (20)

PART C

You are required to answer TWO questions from this Part.

5. 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 EC Treaty on provisions of the domestic legislation of 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)

6.

   1) Ryder Ltd is an Irish resident trading company with the following shareholders, each owning the same class of share:

      - 3% held by Saint Andre Sarl, a French tax resident company owned by three individuals tax resident in France.
      - 43% held by Gabrielle Digan, a US resident individual.
      - 54% held by Ryder Benelux Sarl, a Luxembourg resident company owned by one Irish resident individual. This company was set up solely to avail of beneficial tax rates on investment income in Luxembourg.

      In 2016, Ryder Ltd proposes to pay a total gross dividend of €100,000 to its shareholders.

      You are required to explain Ryder Ltd's withholding tax obligations in relation to the dividend payment, including calculations where applicable, with consideration of domestic legislation, EU legislation and relevant double taxation agreements (DTAs). You should assume that the DTAs are identical in all respects to the OECD Model Tax Convention. (10)

   2) Ryder Marbella Socieodad Limitada (Ryder MSL) is a Spanish tax resident company and wholly owned subsidiary of Ryder Ltd, for which it operates as a sales agent. Ryder Ltd pays Ryder MSL a 3% sales commission in exchange for this service.

      The Spanish tax authority recently completed an audit of Ryder MSL and have concluded that a 5% commission is the appropriate arms-length reward which the company should have received from Ryder Ltd. The Spanish tax authority has issued an assessment on Ryder MSL in relation to additional taxable income of €10 million, which should previously have been included in Ryder MSL's tax return.

      You are required to outline what adjustments, if any, are required to Ryder Ltd's Irish Corporation Tax returns as a result of the Spanish tax audit, on the basis that the transfer pricing adjustment is valid. You should assume Ryder Ltd has always been tax resident in Ireland, and that the DTA between Ireland and Spain follows the OECD Model Tax Convention. (5)

Total (15)

7. John Cartier was born in Argentina, to an Argentinian father and an Irish mother. John's father was an airline pilot, and John moved around a lot throughout his childhood depending on where his father's work took him. Aged 12, John was sent to boarding school in the United Kingdom. He stayed in the UK, where he attended university in London before moving to Belgium, where he began working at an international bank.

John bought a house in Brussels and lived there for six years. He married a French citizen, Florence, with whom he had one child, Augustin. John and Florence later separated, and John moved with work to Dublin in August 2010. Augustin divides his time between his parents, and mainly spends holidays with his father.

John's role requires him to split his time between the bank's head office in New York and its international financial services centre in Dublin. He spends at least 180 work days in the United States in any given year. John has purchased an apartment in New York as a base for his time there. He also recently purchased a house in Dublin, where he lives while in Ireland.

John has travelled on an Argentinian passport, but in recent years applied for an Irish passport through his mother's Irish nationality. He recently changed his driving license from a UK to an Irish license.

John's mother has passed away, but his father still lives in Argentina and he visits him at least once a year.

John has approached you for advice on his taxes. You have concerns regarding his residency status.

You are required to write a letter to John, advising him of his tax circumstances. Your letter should:

1) Outline the residency and domicile rules in the Republic of Ireland. (2)

2) Explain the treaty provision for determining tax residency in cases where there is doubt. (5)

3) Determine where John is resident and domiciled, on the basis of the facts provided. (3)

4) Explain how the remittance basis of taxation works. (5)

Total (15)

8. **You are required to outline the circumstances in which a solicitor or tax agent or another person may be required to withhold taxes and remit these to the Revenue Commissioners, in respect of non-resident individuals. Your answer should explain how this mechanism operates, and include at least three examples.** (15)