THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2017

PAPER 2.09 – UNITED KINGDOM 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 Pound Sterling, 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.

For your information this paper is accompanied by:

- **ADIT Examinations 2017 Tax Tables**

PART A

You are required to answer BOTH questions from this Part.

1. Radcliffe, Inc. is incorporated and tax resident in the United States, and is the parent of a multinational group which manufactures computer and smartphone components.

Its US finance director has recently attended a conference on base erosion and profit shifting (BEPS), and is aware that many countries are bringing in laws to tackle hybrid mismatches. He is concerned that the United Kingdom's rules may affect the following group transactions:

1) Chloe Ltd (a UK-resident company) has borrowed money on arm's length terms from another company within the group, resident in a foreign territory. For UK tax purposes the loan is treated as a debt instrument, but due to the terms of the loan it is regarded as equity in the foreign territory. The foreign territory provides a 90% exemption for dividend income.

2) Radcliffe, Inc. has made a loan to a UK-resident subsidiary, Sita Ltd. Under US law, Radcliffe, Inc. has elected to treat Sita Ltd as a branch.

3) A UK group company, Swinton Ltd, pays royalties to another group entity in Ruritania. Ruritania has a tax rate of 1%.

4) Radcliffe, Inc. has a permanent establishment (PE) in the UK. Radcliffe, Inc. has borrowed money from a third party bank, a portion of which it has used to fund its PE in the UK. As a result, the UK authorities allow a portion of the interest expense to be allocated to the PE.

You are required to draft a report to the finance director, setting out:

1) A high level summary of the scope of the new UK anti-hybrid rules, covering the types of situation in which the hybrid rules may apply and their effect. (8)

2) Your comments on whether you regard the anti-hybrid rules as applicable to the above transactions and, if so, what the effect will be. (17)

If you believe any other UK anti-avoidance provisions may apply, you should mention this, but you are not required to go into detail regarding such provisions.

Total (25)

2. JS is an entrepreneur, resident in the Netherlands, who is considering moving with his family to the United Kingdom. He owns the entire share capital of Telesis (BVI) Ltd, the holding company of a large group engaged in the development of innovative software designed to be integrated into robotic systems. Telesis (BVI) Ltd is incorporated in the British Virgin Islands, where its nominee directors hold quarterly directors' meetings.

Telesis (BVI) Ltd holds its group through a complex chain of intermediary holding companies, some of which are incorporated in countries with which the UK has entered into tax treaties containing the OECD standard residency tie-breaker clause. The intermediate holding companies have little substance in their respective countries of incorporation; however, the group's main operating company is located in Hamburg, Germany, where it has a substantial presence including a large, purpose-built office where its key personal are located.

The group includes other significant subsidiaries, located in the UK and Ireland, all with strong local boards. JS acknowledges that the group is effectively controlled out of Hamburg where its directors meet regularly to determine group policy, including finance and major investment and disinvestment decisions.

JS is a director of various group companies, including Telesis (BVI) Ltd, and takes an active role in the group's key strategic management decisions and contract negotiations.

A friend of JS has cautioned him against making the move to the UK, explaining that, while the UK might offer certain advantages to non-domiciled individuals, there is a significant risk regarding corporate residence. JS is sceptical of his friend's advice, as he only intends to remain in the UK for three-to-five years and has no previous connections with the UK.

You are required to explain to JS the implications, should he become UK-resident, for the corporate residence status of:

1) Telesis (BVI) Ltd. (9)

2) The intermediary holding companies. (5)

3) Telesis GmbH. (4)

Your explanation should also include a summary of the determinants of corporate residency, including any case law, and advice regarding any steps which may be put in place to preserve the non-UK residence status of those companies.

4) JS has asked you to briefly explain the beneficial tax regime applying to a newly UK-resident, non-UK domiciled taxpayer. (7)

Total (25)

PART B

You are required to answer ONE question from this Part.

3. Janet Palmer, finance director of Ace Group, has sent you an e-mail requesting advice on a proposed secondment and certain other matters:

From: Janet Palmer
To: Tax Specialist
Subject: Proposed secondment and tax issues

Hello

Bob Ronson will be seconded from our United Kingdom company, Ace Developments (UK) Ltd, to Ace Developments (Canada) Ltd, a Canadian incorporated and tax resident wholly owned company, for an initial period of one year from 6 April 2016 to coincide with the commencement date of his Canadian work permit, although it is likely that he will be located in Calgary for up to three years. The UK company will continue to pay his wage, and invoice the Ace Developments (Canada) Ltd.

Bob will be working full-time in Canada and will definitely not do more than 30 days of UK duties annually. Indeed he expects to spend no more than three weeks in the UK each year to visit friends and perform essential UK work for the company.

We have agreed with Bob that his relocation package will provide an amount to cover his UK mortgage as he wishes to retain his property in the UK for the foreseeable future. The package will also include a subsistence allowance to cover the expense of the family move to Canada.

We have been advised by our Canadian adviser that the most tax-efficient way is to initially second Bob to Ace Developments (Canada) Ltd, and for Bob to remain a UK resident. He would pay Canadian income taxes and UK National Insurance (NI). In this regard the Canadian adviser has confirmed that Canadian social security contributions are calculated at a higher rate than their UK equivalent and that there is a bilateral social security agreement in place between Canada and the UK.

Finally, various other seconded employees regularly visit the firm's London offices to report and perform necessary UK duties.

Please can you advise on the taxation implications of Bob's secondment to Canada, and also explain how HMRC's short term business visitors' rules operate?

Many thanks
Janet

Following Janet's email, you have spoken briefly on the telephone with her to further clarify the advice required.

On the basis that Bob is seconded by Ace Developments (UK) Ltd to Ace Developments (Canada) Ltd for a 12 month period commencing on 6 April 2016, you are required to provide Janet with the following advice:

1) A commentary on Bob's UK residence position for the 2016/17 tax year. (3)

Continued

3. Continuation

2) A summary of Ace Developments (UK) Ltd's obligation to operate PAYE and NI on Bob's monthly salary. (2)

3) Bob's liability to UK income tax, including the taxation of his relocation package. (2)

4) Your comments on whether Bob may remain subject to UK NI, rather than Canadian social security, during the period. (2)

On the alternative basis that Bob is employed directly by Ace Developments (Canada) Ltd, you are required to provide Janet with the following advice:

5) Bob's liability to UK income tax, including the taxation of his relocation package. (2)

6) Your comments on whether Bob may remain subject to UK NI, rather than Canadian social security, during the period. (2)

7) Bob's options if the bilateral social security agreement between Canada and the UK does not preserve benefit entitlements in the UK. (2)

Janet has also requested your advice regarding the short term business visitor (STBV) regime.

8) You are required to advise Ace Developments (UK) Ltd on the operation of the STBV regime. (5)

Total (20)

4. Sebastian plc is a United Kingdom-incorporated and resident trading company, with trading operations in the UK and branches in France, the United States and Hungary which are agreed to be taxable permanent establishments. Each of the branches carries on trading activity in its local jurisdiction.

The French branch has been profitable for several years and is predicted to continue making profits in the future. It pays tax in France at a rate of 33.33%. The company owns the freehold property from which it trades in France.

The US branch has been lossmaking in recent years, but is predicted to turn a profit in four years' time. It pays tax in the US at a rate of 35%.

The branch exemption anti-diversion rules should not apply to the French and US branches, as they qualify for the Excluded Territories Exemption (ETE).

The Hungarian branch has been profitable for several years and is predicted to remain in the future. It pays tax in Hungary at a rate of 9%.

The taxable profits and losses of the branches over the last six years are as follows:

	Taxable profits/(losses) attributable to branches:		
Year ending	France (£)	US (£)	Hungary (£)
31 December 2017 (projected)	100,000	(20,000)	10,000
31 December 2016	75,000	(25,000)	5,000
31 December 2015	85,000	(80,000)	15,000
31 December 2014	110,000	(20,000)	12,000
31 December 2013	90,000	(120,000)	13,000
31 December 2012	100,000	(50,000)	10,000

Sebastian plc has not made a 'branch exemption' election under s18A CTA 2009.

You are required to:

1) **Comment on whether making an election under s18A CTA 2009 is likely to be beneficial for Sebastian plc. For the purposes of this part of the question, you may assume all the necessary conditions have been met and ignore the historical losses recorded by the US branch. No calculations are required for this part of the question.** (7)

2) **Show what impact the US branch's previous losses could have on the application of the branch exemption. Can anything be done to change this?** (7)

3) **Explain how the future sale of the French freehold property would be treated in the UK, if an election were made under s.18A CTA 2009.** (2)

4) **Comment on whether any of the anti-diversion rules could apply to the Hungarian branch, to prevent a branch exemption election from taking effect.** (4)

Total (20)

PART C

You are required to answer TWO questions from this Part.

5. Mr Dawson, a United Kingdom-resident high net worth individual, has recently been approached with a proposal to invest in trading activities outside the UK. It is proposed that these activities would be carried out through a new form of overseas Limited Liability Partnership (LLP).

   Mr Dawson has been provided with the following information by his lawyers:

   1) Under local law, the overseas LLP can in its own name:

      (a) Trade;
      (b) Acquire, hold and dispose of assets and property; and
      (c) Hold a bank account and take out loans.

   2) Under the LLP agreement:

      (a) All partners will be jointly and severally liable for the debts and liabilities of the LLP.
      (b) Each partner will initially invest a fixed amount into the LLP, which will be included in a ‘partner share’ register.
      (c) The LLP will issue certificates to partners for their ‘partnership shares’, and there are restrictions on transfer.
      (d) All profits of the LLP are allocated to, and accrue to, the partners’ individual capital accounts as they arise, though they will only be physically paid over once per year when the accounts of the LLP have been finalised.

   You are required to answer the following questions:

   1) How might this overseas LLP be classified for UK tax purposes? (12)

   2) What relevance will the classification of the LLP have for Mr Dawson? (3)

6. HWC plc is a company incorporated and tax resident in the United Kingdom. It is the head of a large trading group with a number of subsidiaries throughout the world. The subsidiaries are currently funded by a combination of equity contributions from HWC plc and loans from fellow group companies which have excess cash reserves.

   The directors of HWC plc would like to centralise their group finance function by setting up a dedicated finance company. The finance company would be responsible for monitoring funding requirements around the group, and lending funds as needed. The finance company will initially be equity funded by HWC plc. It will use these funds to make loans to group companies in the UK and other territories.

   HWC plc would prefer to incorporate the finance company in Ireland, which has a 12.5% tax rate, as they currently have offices in Ireland including some administrative staff and a sales team.

   You are required to provide:

   1) A controlled foreign companies (CFC) analysis for the finance company under the proposed arrangements. (13)

   2) A commentary on what the withholding tax position might be for interest paid to an Irish finance company. (2)

   Total (15)

7. Mrs Wortley is non-United Kingdom domiciled individual who is tax resident in Spain. She is considering investing in some properties in the UK, including:

- A house in Reading, which will be let out to individual tenants through a UK letting agency; and

- A hotel in Brighton, which will be run by her son.

In addition, Mrs Wortley inherited a house in London in June 2012. This has remained empty to date, but following renovations will shortly be let out to tenants via an agency.

Mrs Wortley has no intention of moving to the UK at any time in the future.

You are required to advise on:

1) Whether Mrs Wortley would have any UK tax liabilities or filing obligations if she sold any of the three UK properties at a gain in the future. (8)

2) Whether Stamp Duty Land Tax (SDLT) will be payable on the purchase of the Reading and Brighton properties, and what rates will apply. (3)

3) How the rental income from the houses in Reading and London will be treated for UK tax purposes. (4)

Total (15)

8. Giuseppina arrived in London on 1 August 1990 from Dublin, Ireland, to take up a training contract with an international firm of accountants. Her parents originally emigrated from Italy to Dublin in the 1970s, where they established a small family business and have remained.

Giuseppina has lived in London since 1990, with the exception of a two-year secondment to the firm's Czech Republic office in Prague. She regularly visits Dublin and remains in contact with her school and university friends via the internet. In 2000 Giuseppina purchased a London property where she lives with her husband Pedro and her two teenage children.

Although she feels settled in London, Giuseppina carries an Irish passport and expects to acquire property in Dublin sometime in the future.

1) Giuseppina has always filed her tax returns on the basis that she is non-domiciled and pays the annual remittance basis charge. However, she has recently received a letter from HMRC enquiring into her domicile status and has asked you to advise. (10)

2) Giuseppina owns a highly valuable portfolio of foreign shares, as a personal holding, which she recently inherited from her uncle.

Giuseppina has asked you to explain the UK Income Tax, Capital Gains Tax and Inheritance Tax implications of transferring this portfolio into a non-resident discretionary trust. (5)

Total (15)

9. Your client, Roberto Rossi, a United Kingdom-resident but non-domiciled individual, has requested your advice regarding his proposed emigration to Italy.

In advance of the scheduled meeting, he has emailed you the following facts:

- Roberto is 66 years old and has been employed by a London university since 2000.
- In 2012 Roberto took partial retirement (see below).
- Roberto wishes to move back to Italy, where he has a home and where his wife, three daughters and two grandchildren all live. He has no relatives in the UK.
- Roberto wishes to retain his UK flat for use while in the UK, and for occasional visits by other family members.
- Roberto has recently taken on a non-paying, part time engagement at a top Italian research institute.
- Roberto's UK income going forward will be, as now, his employment income and UK pension.
- Roberto currently works three days a week at the university but wishes to reduce this to one day a week.
- Roberto has pointed out that staff at the university have several weeks of paid holiday, so if he reduces his role to one day a week he will only have to physically attend on about 35 days per year. Research and preparation for lectures can be undertaken while abroad.
- In addition to his role at the university, Roberto is a director of two UK start-up companies. He considers that he will spend perhaps seven days working in the UK each year, in connection with these directorships.

1) **Roberto has asked you to explain how he may become classed as non-UK resident. He is particularly keen to learn how many days he may spend in the UK each year, and to what extent it is possible to continue in his role with the university, while qualifying to be treated as non-resident.** (10)

2) **Roberto also seeks to understand, for the purpose of Income Tax and Capital Gains Tax, what the tax consequences would be if he continued living in the UK until 31 July and delayed his departure to Italy until 1 August.**

   In this regard, Roberto would remain working for three days per week from April until 31 July 2017 and resign completely from his UK university employment effective 1 August 2017. (5)

Total (15)