THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2015

PAPER 2.06 – IRELAND OPTION

ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

TIME ALLOWED – 3¼ HOURS

- You should answer **FOUR** out of the seven questions.
- Each question carries equal marks.
- Start each answer on a new sheet of paper. 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.

1 Caroline and Peter, who are each domiciled in Northern Ireland, were married in December 2010. Prior to the marriage, Caroline had worked in Dublin for approximately ten years and Peter worked in Belfast. After their marriage, Peter rented out his house in Belfast and moved to Dublin to live in Caroline's apartment, which she had purchased in 2006. Peter was appointed to a research and lecturing position at a university in Dublin. Caroline is a general practitioner and has worked for the last six years as a partner in a GP practice.

By 2015, Caroline and Peter had two children and the apartment was too small for the family's needs. It was also still in significant negative equity. They have decided to seek employment abroad and looked for opportunities in France. Peter was offered a professorship in a university in Lyon, and Caroline secured a medical position as an employee in a hospital, also based in Lyon. Their new employments are scheduled to commence in mid-September 2015 and they envisage that they will relocate to France on 1 September 2015, buying a house in France and staying there for at least four years. They would like to return to Ireland thereafter for a few years, but think they will ultimately live and work in Belfast. They have taken preliminary French advice and understand that they will become resident in France for French tax purposes from 1 January 2016.

With the improving Dublin rental market, Caroline and Peter expect that there will be no difficulty in renting out Caroline's apartment. They anticipate that the monthly rental will be sufficient to cover the repayments on their interest-only mortgage but that they will have residual expenses on the apartment of about €1,000 per annum, in respect of insurance and property tax.

Peter has a bank deposit account in his sole name in Belfast. After he moved to Dublin, he completed a non-resident declaration for the Belfast account and the deposit interest on this account is paid gross.

Caroline has a bank deposit account in her sole name in Dublin and the deposit interest on this account is paid net of Deposit Interest Retention Tax (DIRT).

Before his marriage, Peter inherited shares in Russ Trading plc, which is a UK company listed in London which pays a final dividend each year in March and an interim dividend in November. At the date of inheritance these shares were worth €50,000 but have appreciated significantly in recent years with the rise in the equity market. Peter would like to sell these shares to finance a refurbishment of his house in Belfast.

In 2005, Caroline invested €20,000 in Genome Research Ltd, an Irish medical technology start-up company based in Galway which pays a final dividend each year in June and an interim dividend in December. After initial difficulties, this company has been very successful in recent years and has secured further financing from a venture capital fund. Although the shares are unquoted, Caroline is aware that there are a number of investors interested in acquiring an interest in the company. She estimates that she could make a significant profit by selling her shares. Caroline is considering a sale of her shares because her younger sister, Jennifer, who is domiciled and resident in Northern Ireland, will be starting at university in England in September 2015. Caroline would like to provide financial support for Jennifer's education and anticipates that between fees and maintenance this will cost about €25,000 per annum.

You are a tax manager in a professional firm. Caroline and Peter have provided you with the above information at a meeting in June 2015 and have asked you to consider their Irish tax position for 2015.

You should assume that the tax treaties between Ireland and France and between Ireland and the UK are in OECD Model form.

Continued

1. Continuation

You are required to write to Caroline and Peter, giving them advice on the following matters:

1) Their residence and ordinary residence position for 2015 and thereafter, for Irish tax purposes. (8)

2) The extent to which their various income sources will be subject to Irish Income Tax, and their Irish tax filing obligations for 2015 and thereafter. (10)

3) Their Capital Gains Tax position, in the event of a sale by Peter of his shares in Russ Trading plc and a sale by Caroline of her shares in Genome Research Ltd (assuming that each sale is to take place in July 2015), and the Irish tax consequences of postponing these sales until early 2016. (4)

4) Any Irish tax consequences of gifts from Caroline to her sister Jennifer, assuming these are paid annually in August, commencing in 2015. (3)

Total (25)

2. Describe three Irish tax provisions that could arguably contravene three different provisions of the Treaty on the Functioning of the European Union.

Discuss each provision in the context of the basis on which each provision might contravene the treaty, by reference to the treaty provisions and to Court of Justice of the European Union (CJEU) case law. Where relevant, you should refer to any argument that could be advanced to defend the legality of the provisions. (25)

3. You are the tax manager in a worldwide firm of tax advisers. You have been contacted by a colleague in the Chicago office of your firm with the news that your firm has just won the worldwide tax advisory work for Digital Solutions, Inc. Your colleague explains that this is the first time his office has acted for a company with substantial Irish operations and has sought your input in preparing for an initial meeting with the company to discuss its medium term tax strategy.

Digital Solutions, Inc. is a US company listed on NASDAQ and its business consists of the supply of business software to financial services customers.

It has a wholly-owned subsidiary company, Digital Solutions (International) Holdings Ltd, which is incorporated in Ireland. This company has, for a number of years, been a party to a cost sharing agreement with Digital Solutions, Inc. This agreement provides that the research and development costs and software acquisition costs of the group – all of which are incurred in the US – are borne by Digital Solutions (International) Holdings Ltd and Digital Solutions, Inc. in proportion respectively to the non-US and US sales of the group. This cost sharing agreement gives each company the royalty-free right to license the software products in its respective area of operation: countries outside the US for Digital Solutions (International) Holdings Ltd, and the US for Digital Solutions, Inc.

Quarterly board meetings of Digital Solutions (International) Holdings Ltd have, since its inception, taken place in the Cayman Islands, where it pays an annual flat tax amount of $5,000, with three US resident directors attending each board meeting in person. Digital Solutions (International) Holdings Ltd employs a service provider in the Cayman Islands to provide administrative and accounting services. It has licensed its interest in the software products of the group – some of which are patented – to Digital Solutions (Luxembourg) SARL, from which it receives royalty payments. This licence is cancellable at 30 days' notice. Digital Solutions (International) Holdings Ltd has used the very significant funds generated by the royalties from Luxembourg over the years to make the payments under the cost sharing agreement and has invested its surplus cash, which is now approaching $1 billion, in a US Dollar denominated portfolio of certificates of deposit, which are held on its behalf in a brokerage account with a London bank and the interest on which are paid without deduction of tax.

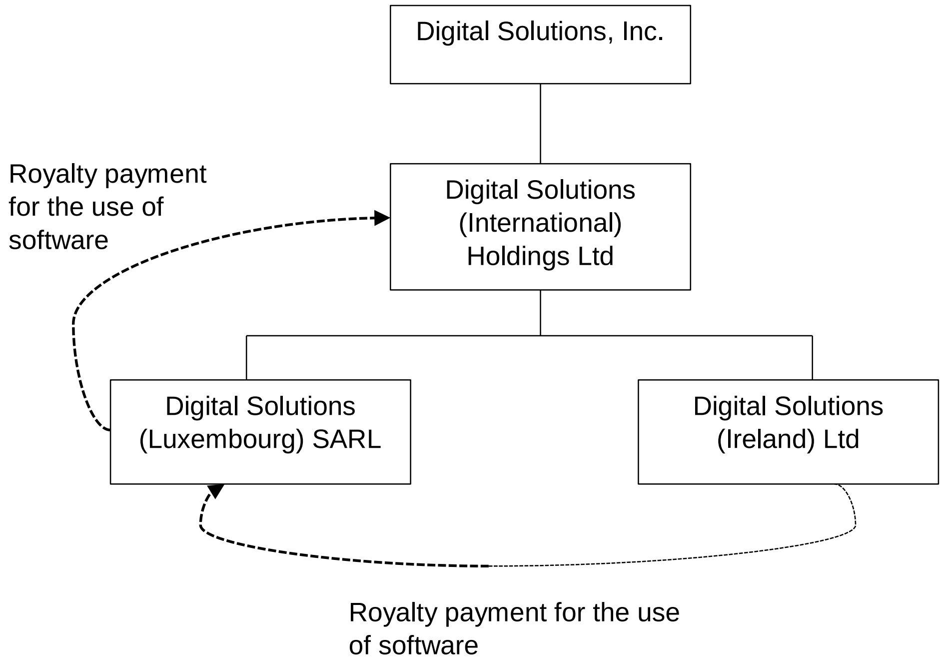
Digital Solutions (Luxembourg) SARL is incorporated and resident in Luxembourg. Digital Solutions (Luxembourg) SARL has sub-licensed the software of the group to Digital Solutions (Ireland) Ltd (also cancellable at 30 days' notice), charging a royalty based on the arm's length value of the intellectual property in the software, computed under OECD transfer pricing principles. Digital Solutions (Ireland) Ltd pays a royalty to Digital Solutions (Luxembourg) SARL, and Digital Solutions (Luxembourg) SARL pays on 95% of this royalty to Digital Solutions (International) Holdings Ltd. The 5% royalty spread is taxable in Luxembourg at 27% and the annual profit after tax is distributed by way of dividend to Digital Solutions (International) Holdings Ltd.

Digital Solutions (Ireland) Ltd is incorporated in Ireland and has held its quarterly board meetings in Ireland, with a majority of Irish resident directors, since the inception of the company in 2005. Digital Solutions (Ireland) Ltd is a wholly-owned subsidiary of Digital Solutions (International) Holdings Ltd. Digital Solutions (Ireland) Ltd undertakes production, sales and marketing and support operations on a worldwide basis (outside the US), selling software to international business customers. Because the software is sold to customers via a website and the sales support activities are either web or telephone based, Digital Solutions (Ireland) Ltd has its business operations only in Ireland and has not established either branches or subsidiaries outside Ireland.

Continued

3. Continuation

The corporate structure and software licence payments of the group are shown schematically below.



You are required to write a memo to your colleague setting out:

1) **The residence of Digital Solutions (International) Holdings Ltd and Digital Solutions (Ireland) Ltd in 2014 and how, based on legislative amendments in Ireland in Finance Act 2014, this position will change over the years 2015 to 2021;** (8)

2) **An account of the Irish tax exposure of Digital Solutions (International) Holdings Ltd and Digital Solutions (Ireland) Ltd over the years 2015 to 2021; and** (8)

3) **Suggestions regarding any appropriate reorganisation of the group structure or operations during this period, discussing the Irish tax consequences of your suggestions.** (9)

Total (25)

4. BRA plc is an Irish quoted company involved in the sale of building products. It has subsidiaries throughout the world, mainly purchased from third parties via share-for-share or share-for-share-and-cash takeover bids. Hitherto, its Irish profits have been sufficient to finance its annual shareholder dividend and it has not repatriated funds from its foreign subsidiaries. It has plans to make a takeover bid for its largest Irish competitor, and to finance the cash element of this bid, it wishes to repatriate surplus cash from its foreign subsidiaries.

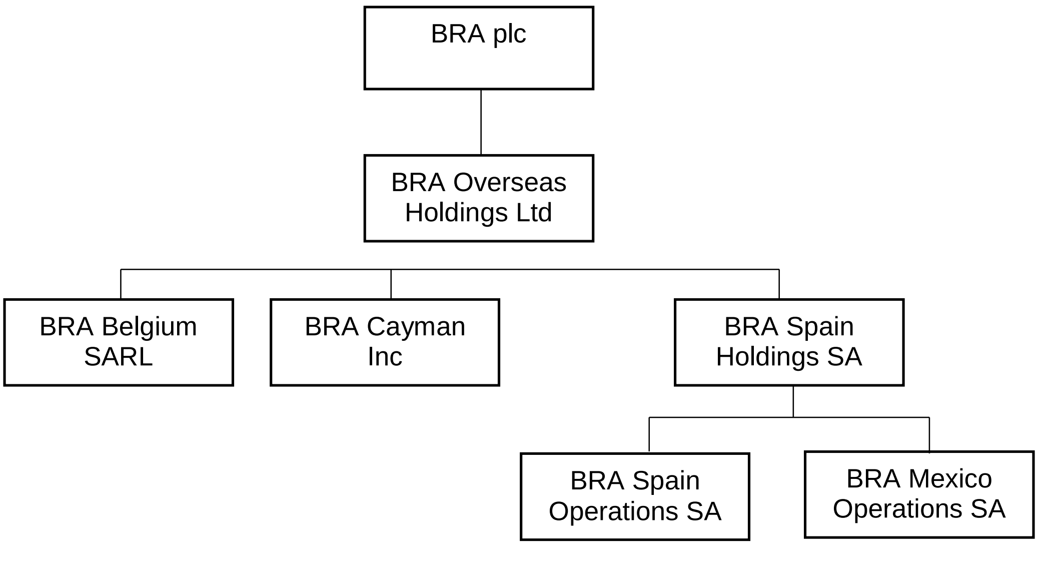
Included in BRA plc's foreign holdings are the following 100% subsidiary companies, each held by BRA Overseas Holdings Ltd, an Irish resident wholly-owned subsidiary of BRA plc:

- BRA Spain Holdings SA, an investment holding company which holds shares in BRA Spain Operations SA and BRA Mexico Operations SA, wholly-owned subsidiary operating companies based in Spain and Mexico respectively. BRA Spain Operations SA has an effective tax rate of 25% (the ratio of tax payable to pre-tax profits), which has not varied significantly from year to year, and the statutory tax rate in Spain is 30%. BRA Mexico Operations SA has an effective tax rate of 35% and the statutory tax rate in Mexico is 30%. BRA Spain Holdings SA has neither distributable reserves nor available surplus cash at 31 December 2014, and incurs no expenses at the holding company level. BRA Spain Operations SA has distributable reserves and available surplus cash of €10m at 31 December 2014. BRA Mexico Operations SA has distributable reserves and available surplus cash of €15m equivalent at 31 December 2014.

- BRA Belgium SARL, a group treasury company resident and operating in Belgium and employing 10 treasury specialists and a number of back office support staff. BRA Belgium SARL has an effective tax rate in Belgium of 5%. The Belgian statutory tax rate is 34%. The company has distributable reserves and available surplus cash of €5m at 31 December 2014.

- BRA Cayman, Inc, which undertakes internet sales of building products into the Caribbean region. BRA Cayman, Inc is resident in the Cayman Islands, where it is tax exempt. BRA Cayman, Inc has distributable reserves and available surplus cash of €30 million equivalent at 31 December 2014.

The corporate structure is shown in the diagram below:



Continued

4. Continuation

You should assume that the tax treaties between Ireland, Spain and Belgium, and between Spain and Mexico, follow the OECD Model, that the dividends are the only transactions in the financial statements of BRA Spain Holdings SA, and that Spain exempts dividends received from resident and foreign subsidiary companies from taxation.

1) **You are required to provide an outline of the general issues, both Irish and foreign, that arise in relation to repatriation of surplus cash from foreign subsidiaries. In this outline, you should describe and consider three different mechanisms by which this repatriation might take place, including the tax consequences of each.** (7)

2) **You are required to prepare an Irish tax Corporation Tax computation for BRA Overseas Holdings Ltd, for the year to 31 December 2015 based on declaration in 2015 of the following dividends (before any applicable withholding tax) by the subsidiary companies and no other financial transactions in BRA Overseas Holdings Ltd:**

   a) **An interim dividend for 2015 of €14.6 million declared by BRA Spain Holdings SA, which is financed in turn by (and declared payable out of) dividends of €7 million and €8 million declared by BRA Spain Operations SA and BRA Mexico Operations SA respectively, in respect of year ended 31 December 2014. The dividend from Mexico to Spain suffers 5% withholding tax of €400,000.**

   b) **A dividend of €5 million declared by BRA Belgium SARL in respect of year ended 31 December 2014.**

   c) **A dividend of €30 million declared by BRA Cayman, Inc. in respect of year ended 31 December 2014.** (18)

Total (25)

5. "The competitive advantages of the Irish tax system are under siege from a variety of different sources, any one of which could have a significant negative impact on the attractiveness of Ireland as a location for investment".

Discuss three competitive advantages of the Irish tax system, outlining their attractiveness for foreign direct investors and the type of investor that each is likely to attract. Give an account of the main threats that these advantages face, and any policy responses or other developments that could mitigate the impact of these threats. (25)

6. You are a manager in a firm of tax advisers. You have been approached by Property Holdings BV, a large property investment company based in the Netherlands. The company undertakes long term investment in commercial and industrial property in jurisdictions where it sees potential for income and ultimate capital gain. Based on the recent performance of the Irish property market, Property Holdings BV is contemplating the acquisition of a portfolio of Irish commercial and industrial property. This would be the first investment by Property Holdings BV in Ireland and, beyond having heard that Ireland has a 12.5% rate of Corporation Tax, the company has no knowledge of Irish taxation and does not envisage undertaking any other operations in Ireland. The company typically invests in a new country by appointing a local estate agent to advise on suitable property acquisitions (remunerated on an hourly fee basis). Where it is desirable or necessary to hold property through a local subsidiary, the company normally outsources the record keeping and compliance to a service provider, and recruits local directors to act on a non-executive basis.

Property Holdings BV envisages that its Irish portfolio will be financed by equity and third party debt, which could be sourced from banks in Ireland or in the Netherlands. Depending on the financial evaluation of each investment, the company may finance a particular property wholly with equity or with up to 75% debt. However, overall the portfolio will have been financed using approximately 50% debt and 50% equity. If the property is held in a subsidiary company, any bank loans will be guaranteed by Property Holdings BV, which will make a cross-charge for the guarantee of an arm’s length amount.

The company proposes to acquire completed commercial (and occasionally industrial) properties, either occupied by existing tenants or newly built property available for letting.

Property Holdings BV’s shares are held equally by four brothers, all Netherlands resident. The finance director advises you that rental income and capital gains from any Irish properties held by a Dutch entity are exempt from tax in the Netherlands and that dividends and other distributions from Irish companies are tax exempt in the Netherlands.

You are required to write a report for the Finance Director of Property Holdings BV setting out the Irish direct tax issues that arise in relation to the acquisition, holding and disposal of an Irish commercial and industrial property portfolio, making any recommendations you think appropriate in relation to the structuring of this investment by Property Holdings BV and summarising the compliance obligations based on your recommended structure.

You should assume for the purposes of the report that the Dutch treaty is in OECD Model form. Consideration of VAT issues is not required. (25)

7. Florence Maguire, who is single, is a farmer and entrepreneur based in Northern Ireland. On her farm outside Cookstown, Co Tyrone, she has established an artisan cheese business (branded as Cookstown Vintage, but not separately incorporated), where she makes several types of cheese, using milk from her herd of Friesian cows. Florence employs three people in the farm enterprise, including Richard, who assists with the cheese-making operation and lives in Cookstown. During the period from 1 April to 30 September, Florence sells her cheese at farmers' markets, including in a number of towns in Ireland. The pattern of these markets is that Richard visits a different town on a particular weekday, joining other stall holders for normal opening hours of 9am to 1pm. The stall is set up at the market each day, normally occupying the same position from week to week.

Thus on Mondays, Richard sets up the Cookstown Vintage cheese stall in Monaghan, on Wednesdays, he is based in Sligo, on Fridays he is based in Donegal and on Tuesdays and Thursdays he attends markets in Northern Ireland. At Christmas, both Florence and Richard attend a major Christmas fair in Donegal from 1 to 23 December from 9am to 5pm daily, where they sell cheese and home-made jams and preserves.

Florence anticipates that her turnover in 2015 in the various Irish locations will be approximately €150,000, with about 25% of this coming from the Christmas fair.

Like most border residents, Florence and Richard regularly visit or pass through Ireland, but neither keeps detailed records of these visits.

You are required to write a letter to Florence to cover the following matters:

1) Discussion of all Irish tax issues relevant to her operations in Ireland; and (20)

2) A summary of any relevant Irish tax compliance obligations. (5)

Total (25)