Chartered Institute of Taxation
Excellence in Taxation

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2015

PAPER 2.09 – UNITED KINGDOM 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 Pound Sterling unless the question requires otherwise.
- Marks are specifically allocated for presentation.

1. Raymond Marcel is a very wealthy non-UK resident entrepreneur who owns a multi-national group (Metrol). The group's parent company is Metrol SA, a trading company headquartered in Paris with substantial trading subsidiaries throughout the EU. The group does not currently have a subsidiary or branch in the UK but has some customers who are currently served out of Paris. Raymond holds Metrol SA via a holding company incorporated in the British Virgin Islands (BVI), Metrol BVI Ltd. In addition, Raymond owns various investments held through a Guernsey company. Raymond wishes to relocate to, and become tax resident in, the UK.

   Raymond has a significant involvement in running the French business and has explained at a recent meeting that he envisages retaining Metrol SA for the foreseeable future. The group is currently in the process of refinancing, and Raymond wishes to enter into negotiations with major banks in the UK with a view to financing the group going forward. He also intends to use his presence in the UK as an opportunity to reach out to the group's UK customers.

   The investments held by the Guernsey company are constantly monitored by Raymond, and sales and purchases take place on a fairly regular basis.

   Raymond is a director of the holding companies, Metrol BVI Ltd and the Guernsey company. He is also a director of Metrol SA. The holding companies' directors rarely meet, although the directors of the trading company do hold regular meetings in Paris at which key decisions are reached.

   Raymond is very conscious of his carbon footprint and believes that this may be reduced by joining board meetings electronically from London, wherever possible.

   You are required to answer the following questions:

   1) **Raymond has asked you to advise him of the implications of his impending personal UK residence on the corporate residence status of Metrol SA, Metrol BVI Ltd and the Guernsey company.** (15)

   2) **Raymond has asked you to set out any particular steps which might be taken to ensure that key entities do not become UK resident.** (5)

   3) **Raymond has asked you to consider whether it is likely that he will constitute a permanent establishment of Metrol SA in the UK.** (5)

   Total (25)

2. At a dinner party, the chairman of a group whose trading activities are solely in the UK says to you that "it is not fair that multinational groups can plan their way out of a tax charge in the UK whereas UK domestic groups have to pay all their taxes. It's not an even playing field".

   Using examples of anti-avoidance legislation, explain how the UK tax system tries to make it an 'even playing field' between UK domestic and multinational businesses, and the extent to which you believe it is successful in this aim. (25)

3. Houston Ltd is a UK wholly owned subsidiary of Glennifer Ltd, a UK resident company and the parent company of a multi-national group. As part of an overall restructuring of the group's activities, it is proposed that Houston Ltd is migrated from the UK to Depalania, a non-EU state, on 30 September 2015. The CEO has advised that he wishes to relocate to Depalania and that the group will now be run from Depalania with no further group management activity in the UK. Until relocation, six of the eight annual board meetings will be held in the UK. Each meeting takes place over two to three days.

There is a Double Tax Agreement in place between the UK and Depalania, which is identical to the OECD model treaty.

On migration, the following deemed gains and losses on foreign assets will arise:

Deemed gains	£520,000
Deemed losses	£95,000

The CEO has asked you to complete the following tasks:

1) **Discuss the steps which will need to be taken to effectively migrate Houston Ltd to Depalania, and how any outstanding tax liabilities will need to be dealt with.** (6)

2) **Calculate the gain that can be postponed on the making of a joint election at migration.** (1)

3) **Determine the tax consequences and gains (if any) of each of the following transactions:**

   a) **Glennifer Ltd sells 15% of the ordinary share capital of Houston Ltd on 31 May 2015.** (3)

   b) **Houston Ltd sells an asset for £35,000 on 31 May 2016. This asset gives rise to a deemed loss on migration of £12,000.** (3)

   c) **Houston Ltd sells an asset for £200,000 on 30 September 2016. This asset gives rise to a deemed gain of £50,000 on migration.** (3)

   d) **Houston Ltd sells an asset for £75,000 on 1 October 2020. This asset gives rise to a deemed gain of £35,000 on migration.** (3)

   e) **Glennifer Ltd sells a further 20% shareholding in Houston Ltd on 31 May 2021.** (3)

   f) **Glennifer Ltd disposes of its remaining shareholding in Houston Ltd on 31 May 2022.** (3)

Total (25)

4. Peter Smithson has recently met with you in connection with his domicile status, and has provided you with the following information:

Peter Smithson

Peter Smithson was born in London on 1 January 1961 and left the UK when he was three years old, to live first in Paris and then in the Netherlands where he was educated. Peter speaks fluent Dutch, which he regards as his first language. His wife and two children are all Dutch nationals.

Peter's father's domicile

Peter's father, Charles, was born in Switzerland in 1920 and lived there until 1960.

Charles became a director of a major bank in 1960, at which point he moved to London. In 1964 Charles moved to Paris, where the bank was headquartered. When the headquarters were relocated to Amsterdam in 1968, Charles moved the family to the Netherlands. Charles remained with the bank in the Netherlands until his retirement in 1977 when Peter was 16 years old. Charles had a deep attachment to the Netherlands and remained there after he retired until his death in 1987. The UK tax authorities accept that Charles acquired a Dutch domicile of choice in 1975, which he retained until death.

Peter's domicile status

Peter has lived in the following countries:

1961-1964	UK
1964-1968	France
1968-1988	Netherlands
1988-1996	UK
1996-2006	Switzerland
2006-	UK

Peter attended local schools in the Netherlands, and also went to university in the Netherlands.

Peter left the Netherlands in 1988 to work in London. However, on 30 September 1989 he married his wife, Nelie, in Amsterdam. Nelie is a Dutch citizen from an established Dutch family.

Peter left the Netherlands to pursue a career in banking. He first moved to London, where he lived from 1988 to 1996. Peter then left the UK to spend ten years in Switzerland, leaving Switzerland in 2006 to work in London. Peter's children are currently in education in the UK.

Peter is currently retired. He intends to leave the UK after his children finish full-time education. Peter wishes to return to the Netherlands with his wife and children, as his childhood friends live in the Netherlands and Peter owns a Dutch property. Peter has maintained very close ties with the Netherlands and spends, together with Nelie and his children, between six and eight weeks per year living in his Dutch property.

Peter owns properties in the UK, the Netherlands, France and Switzerland. He has bank accounts in these four countries. Peter also owns a large foreign portfolio of publicly quoted shares, which generates substantial non-UK income and capital gains.

Peter owns a significant collection of art and jewellery, located in Holland, part of which he is contemplating bringing to the UK.

Continued

4. Continuation

Peter’s wife and children hold only Dutch citizenship and passports. Peter currently carries both UK and Dutch passports.

You are required to answer the following questions:

1) **Peter has asked you to determine whether he is currently UK domiciled.** (10)

2) **Peter has asked you to briefly explain the key features of the non-domiciled income tax and capital gains tax regime.** (8)

3) **Peter has asked you to consider his exposure to UK inheritance tax.** (7)

Total (25)

5. Croftlea, Inc., a listed US company, is an established supplier of luxury furnishings with a balance sheet in excess of £100 million and over 300 employees. It has historically imported premium fabrics from supplier companies in Italy and France. The executive team has recently met with a UK-based designer who possesses a UK-based limited company. Keen to secure exclusive rights to both designs and the supply base of fabrics, Croftlea is considering the acquisition of all three companies. At present, Croftlea is a standalone US company with no presence elsewhere in the world and no external debt.

The UK company (UK Co) generates good profits. It has more than 50 employees and a turnover of around £20 million per annum. UK Co's growth in recent years has been largely debt funded, and its debt currently stands at approximately £10 million.

The French company (F Co) is a small family run concern with fewer than ten employees and turnover of approximately £5 million. This company is debt free, but has no significant cash surplus.

The Italian company (I Co) is a much larger concern and has a turnover of £30 million and 75 employees. It is much more capital intensive and, due to recent investment, has a fixed term loan with its bankers of £5 million.

You may assume that the UK/Italy and UK/France double tax treaties follow the OECD model. The current UK/US tax treaty applies. The relevant tax rates are as follows:

United States	35%
France	33%
Italy	30%

1) Croftlea's finance director has heard that the UK and the EU are good places in which to do business from a tax perspective, and is considering purchasing UK Co and using it as the holding company to purchase P and I. He has asked you to prepare a short note on some specific areas to support his current thinking. Your note should cover the following areas:

a) Dividend Exemption.

b) The Treaty position on withholding tax suffered on dividends and interest received, and on interest paid.

c) EU Directives under which withholding tax is eliminated or minimised on the payment of dividends and interest. (10)

Croftlea's senior management team has £40 million cash at its disposal, with which to make this acquisition. It is estimated that the total acquisition will cost £50 million, and Croftlea is able to raise the additional £10 million from its banking relationships. If UK Co is used as the European holding company, Croftlea will purchase the entire issued share capital of UK for £30 million. Croftlea will then loan £20 million to UK Co to purchase the entire issued share capital of P Co and I Co. It is anticipated that, at least in the short term, third party banking relationships and borrowing positions will be maintained at current levels. There are no hybrid entities or instruments currently envisaged in the acquisition structure.

Croftlea's finance director is keen to understand whether there will be any restriction on the tax deductibility of interest costs in UK.

2) You are required to prepare a briefing note for the finance director, which should comment upon any restrictions on the deductibility of interest costs and upon the overall tax efficiency of this structure. Any thoughts on a more efficient structure would also be welcome. (10)

Continued

5. Continuation

Croftlea's senior management team is keen to break into the luxury furnishings market in London and, if Croftlea successfully acquires the UK design company, it is likely that one of the functions of this company will be to sell in the UK, importing from sister companies in France and Italy.

3) The finance director would like to understand the implications of such inter-company trading for sales taxes and customs duties. You are required to prepare notes as appropriate. (5)

Total (25)

6. For the last few years, Lindsay has been working from her home studio in Dublin, making jewellery which she has successfully sold throughout Ireland. Lindsay wishes to expand her business into the UK and has decided that the most cost-effective means of doing so is through a website. She will be able to take orders through the website and ship them directly from Ireland to the UK-based customers. The website has been registered with a UK domain name and the internet service provider is based in the UK. In order to promote her business, Lindsay plans to attend three trade fairs in the UK next year at which she hopes to attract new customers and to speak to journalists who may be willing to promote her website. Lindsay also anticipates making frequent trips to the UK to conclude contracts with trade customers.

You are required to answer the following questions:

1) Lindsay has asked you to provide her with detailed advice on whether her business has any exposure to UK Corporation Tax. You are required to make reference to the OECD model treaty and relevant commentary on the OECD model treaty as part of your answer. (15)

2) Lindsay is VAT-registered in Ireland and has asked you to explain the VAT position concerning these potential UK sales. Her business plan forecasts UK sales to be in excess of £50,000 in the first twelve months. Customers are expected to comprise both companies and individuals. (5)

3) Lindsay has asked for help in understanding what additional VAT returns she will be required to make once she has made sales from Ireland to the UK, and what additional entries she may need to make on her regular VAT returns. (5)

Total (25)

7. Maxine is a German businesswoman who owns the Maze fashion business, which is currently focused on the German market but has ambitious plans for expansion. In mid-2007 Maxine became UK tax resident but in March 2010 she left the UK to become tax resident in France.

Maxine's son, Jack, remained tax resident in the UK throughout the period. Jack was born on 9 August 1994 and is permanently based in London.

Maxine owns homes in France and Germany, in which she spends significant periods of time each year.

In December 2014 Maxine acquired her main UK residence, for £9,500,000. The property initially required significant work and was not habitable until 15 March 2015, at which point Maxine occupied the property as her home.

Maxine has spent the following days in the UK:

Tax Year	Days
2011/12	75
2012/13	140
2013/14	55
2014/15	95

Maxine has accommodation available to her in the UK throughout the period.

Maxine does not normally perform any work in the UK during her visits. However, she has advised you that in 2012/13 she worked in the UK on at least 50 days, spending at least five hours per day preparing reports.

You are required to answer the following questions:

1) **Maxine believes that from March 2010 she has been non-UK resident. She has now decided to spend substantially more time in the UK and has asked you to review her residence status for all tax years from 2012/13 to 2014/15. You may assume that Maxine is UK resident for 2012/13 under the old case law test.** (15)

2) **Maxine has asked you to briefly consider the effect of any applicable tax treaty on her residence status. You may assume that the treaty follows the OECD model.** (5)

3) **Maxine intends to relocate an employee of Maze to the UK. It is very likely that, whilst that employee will become UK resident, they will perform a significant proportion of their duties abroad. Maxine has asked you to briefly explain how overseas workday relief might apply to this situation, and to explain whether the employee will be subject to UK National Insurance Contributions.** (5)

Total (25)