



# ADVANCED TAX STRATEGY

## STRATEGIC LEVEL EXAMINATION

### AUGUST 2021

#### **NOTES:**

You are required to answer Question 1 and **any three** from Questions 2,3,4 and 5.

Should you provide answers to all questions, only the answers to Questions 2,3 and 4 will be marked.

**TAX TABLES ARE PROVIDED**

**NOTE: IF YOU MAKE AN ASSUMPTION IN ANY QUESTION PLEASE  
STATE THAT ASSUMPTION CLEARLY**

#### **TIME ALLOWED:**

4 hours, plus 20 minutes to read the paper.

#### **EXAMINATION FORMAT:**

This is an open book examination. Hard copy material may be consulted during this examination, subject to the limitations advised on the Institute's website.

#### **INSTRUCTIONS:**

During the reading time, candidates are encouraged to use this time to read each question carefully. Please note, however, candidates will not be prevented from using this time to start typing notes and solutions.

Marks for each question are shown. The pass mark required is 50% in total over the whole paper.

You are reminded to pay particular attention to your communication skills, and care must be taken regarding the format and literacy of your solutions. The marking system will take into account the content of your answers and the extent to which answers are supported with relevant legislation, case law or examples, where appropriate.

**N.B.** Please note that the right click function has been disabled during your examination. Should you wish to copy and paste, please use the following shortcuts: Copy (Ctrl + C) and Paste (Ctrl + V).

## Question 1

It is 5 August 2021. You are a recently qualified CPA working in a large practice in Cork. Yesterday, you met with Andrew and Gerard Duncan. They are two brothers who have been clients of the practice for many years. Andrew is 59 and Gerard is 50. Gerard is the Managing Director of their company, Duncan Engineering Solutions Ltd (DESL). Andrew and Gerard each own 50% in DESL and they have each worked full-time as directors for the company since 1998 when the company was incorporated. Andrew is keen to retire this year on his 60<sup>th</sup> birthday which takes place on 30 November 2021 and at this time, he would like to have access to funds to buy a retirement home in Spain. Gerard, on the other hand, feels he is too young to retire but he has identified another local entrepreneur who has set up a new software business in which he may get a job and buy some equity.

The brothers have agreed to sell DESL. This is the first disposal of non-residential assets that either brother will have made to date. Andrew recently received a call from a Dublin based competitor company wishing to buy the entire shareholding in DESL for €1.8 million. However, they were advised that an offer for the trade assets is also on the table. In the case of an asset only sale, the proceeds will be increased to take account of the fact that the liabilities will remain with DESL. Appendix 1 contains details of the most recent statement of financial position for DESL for the year ended 31 March 2021.

### REQUIREMENT:

- (a) Advise on the capital gains tax consequences for Andrew and Gerard if they sell their shares in Duncan Engineering Solutions Ltd (DESL) prior to 30 November 2021. Where relevant, your answer should include all the requirements and conditions of any reliefs to be claimed. (20 marks)
- (b) Advise on the chargeable gains and corporation tax consequences of DESL selling the trading assets, assuming the disposal takes place in 2021. (11 marks)
- (c) Advise Andrew and Gerard on how to tax efficiently extract the funds from DESL after such an asset sale bearing in mind that they ultimately wish to receive their proceeds personally. (9 marks)

[Total: 40 marks]

## Appendix 1:

	Note	€	€
<b>ASSETS</b>			
<b><u>Non-current Assets</u></b>			
Property	1	810,000	
Plant and Equipment	2	70,000	
Intangibles	3	<u>240,000</u>	
			1,120,000
<b><u>Current Assets</u></b>			
Inventory	4	90,000	
Trade receivables		<u>180,000</u>	
			270,000
<b>Total Assets</b>			<b><u>1,390,000</u></b>
<b>EQUITY AND LIABILITIES</b>			
<b><u>Share capital and Reserves</u></b>			
Ordinary shares	5	50,000	
Reserves		<u>1,200,000</u>	
			1,250,000
<b><u>Non-current Liabilities</u></b>			
Loan			40,000
<b><u>Current Liabilities</u></b>			
Trade payables		90,000	
Accruals		<u>10,000</u>	
			100,000
<b>Total Equity and Liabilities</b>			<b><u>1,390,000</u></b>

### Notes to Statement of Financial Position:

1. The manufacturing premises is valued at its market value. The premises were bought in 2005 for €380,000.
2. The original cost of plant and equipment was €160,000. The net book value is reflective of the market value of the plant and equipment and its tax written down value.
3. A patent was purchased in the year ended 31 March 2020 for €400,000. The patent is being used for the purposes of DESL's trade and has a current market value of €320,000. In accordance with the company's amortisation policy, the patent is being amortised over 5 years.
4. All inventory is valued at cost which is equal to market value.
5. Ordinary share capital comprises 100,000 €0.50 ordinary shares.

## Question 2

It is mid-September 2021 and you have just taken up a new job in a small accountancy practice in Donegal. You mentioned in your interview that you have some experience advising on succession planning and also VAT on property. The partner in the practice has sent you the following email:

**To:** New CPA  
**From:** Partner in practice  
**Re:** Property transactions – Dervla Bonner

I hope you are settling in well to your new role. I have a VAT query that I would like you to look at and also some tax planning regarding the transfer of a residential property. I am meeting Dervla, a long-standing client of the practice, next week. I hope to be able to give her some answers to her queries then. Let me know if you need any further information to enable you to advise on the following queries.

### Background

Dervla is a 60-year-old retired head teacher. She was widowed a few years ago and has one daughter, Phil (32). Dervla, with the exception of a short stay in the UK with her daughter in 2011, has lived in Donegal all her life. Phil went to the UK to study, and she has been non-resident in Ireland for the past ten years. Phil has only returned to Ireland for short holidays for three to four weeks per annum during this time. Phil and her husband are planning on moving back to Donegal permanently before the end of 2021. Phil is a dentist. The prospect of Phil moving home has encouraged Dervla to think of buying a new property and of transferring some property to Phil.

### VAT

Dervla has a number of residential properties which she lets out. She has recently viewed a commercial property in Letterkenny, Co. Donegal which would be perfect for Phil and her husband to operate their dental practice from when they move home to Donegal in November 2021. The price of the property is €240,000 plus VAT (if any). It has recently been completed by a developer who informed Dervla that he is VAT registered. Subject to our advice, she would offer Phil and her husband a 10-year lease on the property for rent of €2,000 per month. Dervla thinks this purchase would be a good move as the property needs no work prior to Phil and her husband moving their business to it and she could certainly use the €2,000 per month to fund her lifestyle during retirement.

### Transfer of residence

Dervla would like to pass on the family home to Phil. She would like to gift the family home to Phil so that she and her husband can live in this house when they return to Donegal. She would therefore like to complete the transfer on 1 November 2021.

Dervla's late husband purchased their house in Letterkenny for €90,000 on 1 January 1995. When Dervla's husband died, he left all his assets to Dervla, including his 100% ownership of the house in Letterkenny. At the time of his death on 1 December 2010, the house was valued at €200,000. The house is currently valued at €400,000 and a local solicitor has provided Dervla with a quote of €1,500 to do the legal paperwork attaching to the transfer. Phil has said that she will cover these costs.

After her husband died, Dervla was very lonely, and she went to reside in England with Phil for nine months. Dervla then moved back to the property and she lived in it until 1 January 2020. Since then, she has lived in one of her smaller properties which was previously rented to tenants, as it is closer to town and requires much less maintenance.

Dervla has never before gifted any assets to Phil.

Regards

The Partner

**REQUIREMENT:**

You have been asked to prepare a tax briefing memo for the partner's next meeting with Dervla Bonner. Your memo should include the following:

**(a)** VAT and stamp duty advice in respect of the commercial property purchase which Dervla is considering and the subsequent letting of this property should the purchase go ahead.

**(10 marks)**

**(b)** Details of the tax consequences for Dervla and for Phil of the transfer of Dervla's house in Donegal to Phil on 1 November 2021.

**(10 marks)**

**(Total: 20 marks)**

### Question 3

It is now 23 August 2021 and you have been engaged by Simon Harkin to advise him on some tax queries regarding his trading company. Simon's wife, Elaine, would also like some advice regarding her own income tax position.

Five years ago, Simon set up a bespoke online food delivery business in Ireland, Bespoke Deliveries Ltd (BDL). Simon owns 100% of the shares in the company. The business had been ticking along nicely however, with the recent pandemic he has found that sales have increased substantially. In order to be able to keep up with increased demand, Simon feels that he needs to invest in a bigger premises, additional plant and machinery and he needs to hire at least 10 new employees. Simon has heard that he can offer shares in the company to investors in return for them providing some much-needed cash to fund the business expansion. Simon has a good friend from college called Clive, who is single and a successful software developer with substantial earnings. Clive has confided in Simon that he is a top rate taxpayer and that he would like to hear of ways he can reduce his income tax liability while at the same time help Simon and his business out. Clive estimates that he will have €130,000 taxable earnings in 2021 and PAYE deducted of €42,700.

Simon's wife, Elaine, is employed by a large pharmaceutical company and she is a 40% taxpayer on her salary. Her employer is an Irish subsidiary of a US company who has always tried to incentivise staff with Revenue approved share options. As part of Elaine's remuneration package in 2015 she was granted share options in her employer company. Elaine did not pay much attention at the time the share options were given to her as she was advised that she would have no tax consequences in 2015. However, in 2021, she has received a letter from the human resources department (HR) advising her that she must exercise her options on or before 31 October 2021. Elaine has found the following details on an email from HR in 2015.

Option granted to Elaine Harkin on 31 October 2015

- 5,000 ordinary shares at €3 per share (market value of shares in 2015 was €4.20)
- Options must be exercised within 6 years in line with company policy
- Irish Revenue approved scheme

The current market value of these shares is now €6.50 per share. Elaine would like to gift any extra (after tax) income from the exercise of these share options to Simon for investment in his business.

#### REQUIREMENT:

(a) Provide Simon with details on an employment incentive scheme that Bespoke Deliveries Ltd (BDL) could apply for. Your advice should include details of what BDL must comply with as well as the requirements of any investor in BDL. (7 marks)

(b) Advice on the likely income tax savings Clive could avail of in 2021 if he invests €70,000 in BDL via an employment incentive scheme. (5 marks)

(c) Advise Elaine of the tax implications for her on the exercise of the share options and the tax efficient transfer of the after-tax income to Simon. Your answer should outline the due date for any income tax due on the exercise of the share options and consider how Simon will invest this money in the company. (8 marks)

[Total: 20 marks]

## Question 4

It is 13 December 2021 and you have just returned from a secondment in a large audit client's premises. Your first job in the office is to deal with a review that the partner has requested in respect of the corporation tax file of one the largest clients of the practice, Complex Pharma Ltd (CPL).

The partner had a meeting with the Finance Director of CPL yesterday where they discussed the corporation tax position for the company for 2021. In light of this meeting and your return to the office, the partner would like you to have a review of the corporation tax calculations for CPL for the year ended 31 December 2020. He said "during your secondment we missed your expertise on the area of corporation tax. As CPL is one of our largest clients, I think it would be a useful exercise for you to review last year's comp and return."

When you review the file for the year ended 31 December 2020 you note that the company had taxable profits of €160,000 and a final corporation tax liability for the year of €20,000. The corporation tax return and payments were made on time. You also note the following:

1. There was a pension accrual at the year ended 31 December 2020 of €250,000. There was an opening accrual of €100,000 on 1 January 2020. There is no adjustment in the corporation tax computation for the movement in the pension accrual.
2. A new patent was acquired on 1 July 2020 for €4,500,000. This acquisition was financed by a loan subject to 2% interest per annum which was payable from the date of acquisition. CPL purchased the patent for the purpose of making and supplying new medicines to drive increased turnover for the company's trade. In the tax adjusted profit trading computation, you note that amortisation of €450,000 was added back. From a review of the statement of profit or loss you note that there was an interest expense of €45,000 in respect of the interest on the loan to acquire the patent.

The partner has advised that if any adjustments are necessary, he would like a detailed tax memorandum prepared detailing why the adjustments are necessary, conditions attaching to any reliefs that should have been claimed and also how the corporation tax position for the company should be rectified with the Revenue Commissioners.

### REQUIREMENT:

(a) Advise on the correct corporation tax treatment in respect of the pension accrual position at the year ended 31 December 2020 and on any tax relief that should be available in respect of the acquisition of the patent. For any corporation tax reliefs that may be available, you should outline the conditions attaching to the relief. You should also clearly advise of the overall impact of the amendments for the corporation tax liability for CPL for the year ended 31 December 2020.

(13 marks)

(b) Advise on how the corporation tax position for CPL for the year ended 31 December 2020 should be corrected with Revenue.

(7 marks)

[Total: 20 marks]

## Question 5

You are a recently qualified Certified Public Accountant and you have just had a meeting with siblings Janice and Niall Harvey. Both Janice and Niall have separate tax queries which they would like your tax advice on.

### **Janice Harvey**

Janice has recently attended the reading of her father's will and she has been advised that she is the sole beneficiary of her deceased father's 100% shareholding in Harvey Car Repairs Ltd (HCRL). She is also inheriting a building which her father held personally but which has been used solely for the purposes of HCRL's trade since her father acquired it in 1999. Her father incorporated HCRL in 1996 and he had worked for the company up until his death. Janice's father was a qualified mechanic, and he successfully built the trade of HCRL into the thriving trading business it is today. Janice's mother is still alive, and she inherited the remainder of Janice's father's estate. Janice has never received a gift/inheritance to date in her life.

Janice has sourced a market valuation for the building of €250,000 from a local valuer. Currently, the 100% shareholding in HCRL is valued at €2 million. A summary of the most recent draft statement of financial position for HCRL is outlined below:

<b>Harvey Car Sales Ltd</b>		
<b>DRAFT summary of Statement of Financial Position as at 30 June 2021</b>		
	<b>Note</b>	<b>€</b>
<b>ASSETS</b>		
Non-Current Assets	<b>1</b>	1,230,000
Current Assets	<b>2</b>	<u>470,000</u>
<b>Total Assets</b>		<b><u>1,700,000</u></b>
<b>EQUITY &amp; LIABILITIES</b>		
Share Capital & Reserves		1,490,000
Current Liabilities	<b>2</b>	<u>210,000</u>
<b>Total equity &amp; liabilities</b>		<b><u>1,700,000</u></b>

### **Notes:**

1. Within non-current assets are shares that the company holds as an investment. These share investments are currently valued at €350,000 and this value is included in the above figures.
2. All current assets and liabilities relate to the trade.

**Niall Harvey**

Niall Harvey is the sole shareholder in Harvey Holdings Ltd (HHL). HHL has two wholly owned subsidiaries, NH Publishing Ltd (NHP) and NH Digital Ltd (NHD), and one 70% subsidiary Digital Mapping Irld Ltd (DMI). All companies in the group have a 31 December year end.

Unfortunately, the trade of DMI has not been doing well, partly due to the pandemic. The directors decided to cease the trade on 31 December 2020. The draft corporation tax computation for the year ended 31 December 2020 shows a trading loss of €100,000 and rental income of €4,000. The results for the company for the last few years are outlined below:

	<b>Tax Adjusted Trading profit/(loss)</b>	<b>Rental Profits</b>
YE 31 Dec 2019	10,000	4,000
YE 31 Dec 2018	90,000	4,000
YE 31 Dec 2017	140,000	-

In addition, in the year ended 31 December 2020, NHP made a trading profit of €70,000 and had rental profits of €10,000 whereas NHD made a trading loss of €99,000.

As cashflow is tight within the group companies, Niall would like some advice regarding the loss offsets which his various companies can claim.

**REQUIREMENT:**

Draft a file note outlining the tax considerations regarding the following:

**(a)** Discuss the tax implications for Janice in respect of the inheritance of the shares and the building from her father. Any tax planning advice regarding the claiming of reliefs as well as the conditions to be satisfied for any reliefs, should also be included.

**(10 marks)**

**(b)** Outline the loss relief claims that can be made by the various companies in the Harvey Holdings Ltd group highlighting the cash flow benefits for each company as a result of your advice.

**(10 marks)**

**[Total: 20 marks]**

**END OF PAPER**

## SUGGESTED SOLUTIONS

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND

# ADVANCED TAX STRATEGY

STRATEGIC LEVEL - APRIL 2021

## SOLUTION 1

### (a) CGT consequences of a share sale

#### **CGT for Andrew – retirement relief**

For Andrew, as he is over the age of 55, retirement relief should be considered. If the conditions are satisfied, gains realised on the disposal of relevant business assets are relieved from CGT. As Andrew is disposing of his shares to a person/entity other than a child and as he is aged between 55 to 65, a threshold of €750,000 applies. See discussion below regarding marginal relief.

2

Retirement relief applies to the disposal of qualifying assets. Qualifying assets includes shares in a family trading company which have been held by the individual making the disposal for a period of not less than 10 years ending on the disposal and the individual has been a working director of the company for 10 years, five of which years he has been a full-time working director of the company. Andrew should meet all these conditions.

2

A company is a family company in relation to an individual who is disposing of the shares, if he owns at least 25% of the shares for 10 years immediately prior to the disposal. As Andrew owns 50% of the shares in DESL, the company will be regarded as a family company.

2

#### **Marginal relief**

If the sales proceeds on disposals to third parties relating to qualifying trading assets exceed €750,000, as is the case with Andrew's 50% shareholding in DESL, retirement relief is not available. However, a measure of marginal relief under section 598(2) TCA 1997 may be available providing that the total CGT payable on the shares disposed of does not exceed 50% of the excess of the proceeds over €750,000.

It is first necessary to compute the total CGT arising on the disposal. The maximum CGT payable will be the lower of:

- the actual capital gains tax computed; or
- 50% of the excess of the sales proceeds relating to qualifying assets over €750,000.

See below for details of the marginal relief calculation for Andrew.

4

Revised entrepreneur relief (conditions discussed below) reduces the rate of CGT from 33% to 10%, while retirement relief operates by exempting proceeds (subject to the applicable threshold). Therefore, both reliefs can arise on a disposal of the same asset(s) if the conditions are all met. Retirement relief and revised entrepreneur relief are mandatory reliefs, i.e. where the conditions apply the reliefs apply automatically, which means there is no scope to defer one relief to maximise the other if the conditions for both are met.

It is possible that a disposal of assets qualifying for retirement relief on proceeds of €750,000 will also use up €750,000 of the lifetime threshold of gains of €1,000,000 under revised entrepreneur relief where the conditions for both reliefs apply. See calculations below re the availability of the 10% ER rate to Andrew.

2

### **Revised entrepreneur relief (ER)**

ER provides that a lower rate of CGT (10%) applies to an individual who disposes of chargeable business assets if that individual is a “relevant individual” or “qualifying person”. The relief operates by applying the 10% CGT rate to disposals of chargeable business assets by a qualifying individual. There is a lifetime limit of €1 million of chargeable gains that qualify for the 10% rate. Chargeable gains that exceed €1 million are taxable at the rate of 33% on the amount in excess of €1 million.

Chargeable business assets for the purposes of ER include ordinary shares in a qualifying company carrying on a qualifying business.

A “qualifying business” is a business that does not include: the holding of shares/securities held as investments; the holding development land; or the development or letting of land. DESL should be a qualifying company carrying on a qualifying business.

Where a business is carried on by a company, as is the case with DESL, Andrew and Gerard must satisfy the following conditions:

- The individual owns not less than 5% of the ordinary shares in the qualifying company – both Andrew and Gerard own 50%
- The individual must have been a director or employee of the qualifying company who is, or was, required to spend not less than 50% of his or her time in the service of the company in a managerial or technical capacity and has served in that capacity for a continuous period of three years in the five years immediately prior to the disposal of the chargeable business assets – both Andrew and Gerard have been fulltime directors in the company since incorporation.
- The individual must have owned the shares for three of the last five years.

4

As both Andrew and Gerard meet the conditions for ER, see below for the relevant CGT calculations.

#### **Share sale**

	€
Proceeds (100% of shares)	1,800,000
Less cost	(50,000)
Gain	1,750,000

#### **Gain split**

Andrew	875,000
Gerard	875,000
Gain	875,000
Less annual exemption	(1,270)
<b>Gain each after annual exemption</b>	<b>873,730</b>

#### **Andrew – consider retirement relief – marginal relief and ER**

Gain after annual exemption at 10%	87,373
RR marginal relief -	
Proceeds	900,000
Less RR limit	(750,000)
Excess	150,000
<b>50% of excess</b>	<b>75,000 CGT for Andrew</b>

#### **Gerard – consider ER**

<b>Gain after annual exemption at 10%</b>	<b>87,373 CGT for Gerard</b>
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6

**22 (max 20)**

**(b) CGT and corporation tax consequences of an asset sale**

Firstly, the proceeds need to be calculated. After the net proceeds have been ascertained the chargeable gains and corporation tax on balancing charges need to be calculated.

	€
Proceeds for share sale	1,800,000
Add liabilities	140,000
Proceeds for Asset sale	<i>See note 1</i>
	1,940,000

**Note 1 - Assets for sale - needed to work out goodwill valuation**

Property	810,000
Plant and Equipment	70,000
Intangibles	320,000
Inventory	90,000
Trade receivables	180,000
Goodwill (balancing figure)	470,000
	1,940,000

4

**Note 2 - CGT computations**

	€
Property	810,000
Proceeds	810,000
Less cost	(380,000)
	430,000
<b>Goodwill (balancing figure)</b>	
Proceeds	470,000
Less cost	0
	470,000

**Plant and Equipment**

Proceeds	70,000
Less cost	(160,000)
	(90,000)
	<i>Capital allowances will restrict loss to nil.</i>
<b>Intangibles</b>	
Proceeds	320,000
Less cost	(400,000)
	(80,000)
	<i>Capital allowances will restrict loss to nil.</i>
Total gain	900,000
<b>Effective rate of CT in DESL is 33%</b>	<b>297,000</b>

4

**Note 3 - Corporation tax computations**

**Plant and Equipment**

Proceeds	70,000
Less TWDV	(70,000)
Balancing Allowance/Balancing charge	0

**Intangibles**

Proceeds	320,000
Less TWDV	(240,000)
Balancing charge	80,000
Compare to CAs previously claimed	160,000
Therefore, BC	80,000
CT on the BC	at 12.5%
	10,000

3

11

(c) As Andrew and Gerard both would like to receive their proceeds personally, the DESL can be liquidated after the assets are sold and creditors are paid. A capital distribution of cash to Andrew and Gerard following the appointment of a liquidator is a CGT disposal by the brothers of their shares.

For Andrew, retirement relief will be available on the capital distribution as the necessary conditions are satisfied.

Technically, retirement relief does not apply as, at the time of liquidation, the assets of the company consist of the proceeds of disposal of the business and not the business itself. However, the legislation allows for retirement relief in the case of capital distributions received by an individual in the course of the dissolution or winding-up of a family company in the same manner as if the individual had disposed of the shares or securities in the company. By concession, the relief will apply if DESL's assets are sold not more than six months prior to liquidation and where the assets were sold with the intention of liquidating the family company. Therefore, Andrew and Gerard need to be continuous of this time restriction between the asset sale and the liquidation and distribution of the proceeds.

ER should be available to Gerard, as all the relevant conditions are satisfied.

3

	€
Proceeds for share sale	1,800,000
Add liabilities	140,000
Proceeds for Asset sale	<i>As used to work out GW</i>
Less repayment of liabilities before liquidation	(140,000)
Less CT on chargeable gains	<i>See note 2 above</i>
Less CT on balancing charge	<i>See note 3 above</i>
Proceeds available for distribution	1,493,000
Split 50:50	746,500

2

	€
Proceeds on liquidation	1,493,000
Less cost	(50,000)
Gain	1,443,000

**Gain split**

Andrew	721,500
Gerard	721,500
Gain	721,500
Less annual exemption	(1,270)
<b>Gain each after annual exemption</b>	<b>720,230</b>

***Andrew - consider retirement relief***

Full RR as proceeds from liquidation <€750,000

Nil CGT for Andrew

Gerard - consider ER

CGT at 10% 72,023 CGT for Gerard

4

9

## SOLUTION 2

### TAX MEMO

TO Partner  
FROM New CPA  
RE Dervla Bonner

#### Stamp duty and VAT on property

Dervla, as the purchaser of the commercial property will have to pay stamp duty on the purchase of the commercial property.

$\text{€240,000} \times 7.5\% = \text{€18,000}$ .

Stamp duty is payable within 30 days of execution of the contract for sale. However, in practice, Revenue extends this deadline to 44 days.

If the commercial property has been developed by a developer who is VAT registered, it is likely that the developer will have claimed back VAT on the construction cost of the commercial property. As the property has recently been completed by the developer (i.e. within the last 5 years and this is the first sale), this will mean that the property is 'new' for VAT purposes and the developer will be required to charge VAT on the sale of the property to Dervla. Therefore, Dervla will be paying €240,000 plus VAT of €32,400 (Total outlay of €272,400).

As Devla's daughter is a dentist, she is carrying on a VAT exempt business and so she has no ability to register or reclaim any VAT charged in respect of her services.

Under the VAT on property regime, lettings are exempt from VAT but, in certain circumstances, it is possible for the landlord to opt to tax the letting.

However, as Dervla and her daughter are connected and as Phil (the proposed tenant) will not be entitled to at least 90% VAT recovery, it will not be possible for Dervla to opt to tax the letting.

Therefore, should Dervla buy the property for €240,000 plus VAT of €32,400 and register for VAT to reclaim the €32,400 VAT on acquisition, then she will suffer a clawback of €32,400 when she signs a 10 year lease with her daughter. There is therefore no point in Dervla registering for VAT in respect of this purchase and subsequent letting.

**12 (max 10)**

#### Transfer of residence

Dervla needs to consider capital gains tax (CGT) in respect of the transfer.

Phil will need to pay any stamp duty and she will need to also consider capital acquisitions tax (CAT).

#### Dervla – CGT

Principal private residence relief (PPR) should be considered for Dervla. Dervla will be deemed to have acquired the house when her husband died. She will therefore have a base cost of €200,000 in the property.

The property was not utilised as Dervla's PPR throughout all the period of ownership i.e. from the date she inherited ownership from her husband. However, there is a general rule whereby **the last 12 months of ownership are included in the period of occupation** as long as the owner was in occupation at some time during the period of ownership. Therefore, even though Dervla moved out on 1 January 2020 and hence will not have lived in the house as her PPR for 22 months, only 10 months will be treated as non-occupation for PPR relief.

	€	
Market value	400,000	
Less cost	(200,000)	
Gain before PPR	200,000	0.5
Less PPR (note 1)	(177,246)	
Gain after PPR	22,754	
Less Annual exemption	(1,270)	0.5
Gain	21,484	
CGT at 33%	7,090	0.5

**Note 1 - PPR calculation**

Total period of ownership	167	0.5
Periods of non occupation	9	while in England
Last 22 months of ownership	22	Moved out
Last 12 months deemed	(12)	0.5
Total period of non-occupation	19	
Total period of occupation	148	
<b>PPR = period of occupation/period of ownership</b>		
148/167 =	0.89	0.5

Dervla will have to pay this CGT liability by 15 December 2021 and it should be included within her self-assessment tax return for 2021 which is due on 31 October 2022.

**Stamp duty for Phil**

€400,000 x 1% = €4,000. This is payable within 44 days. style="text-align: right;">0.5

**CAT for Phil**

Phil will have her group A threshold of €335,000. She will also be able to utilise the €3,000 annual exemption. As Phil is paying the legal fees and stamp duty, she will be able to reduce her CAT liability by claiming these amounts against the value of the house.

CAT for Phil

	€	
Market value	400,000	
Less SD	(4,000)	0.5
Less legal fees	(1,500)	0.5
Taxable value	394,500	
Less Annual exemption	(3,000)	0.5
	391,500	
Less Group A	(335,000)	0.5
	56,500	
CCAT at 33%	18,645	0.5
Less CGT/CAT offset	(7,090)	1.0
CAT due	11,555	

The CAT liability and return will be due on 31 October 2021.

Phil must retain the property for two years to avoid any clawback of the same event CGT/CAT offset.

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## SOLUTION 3

### (a) *From the Bespoke Delivery Limited's (BDL) company perspective*

A possible relief that Simon should be considering for BDL is the Employment Investment Incentive Scheme (EIIS).

For the purposes of EIIS, BDL must intend to use the amounts raised for a “qualifying purpose” within 4 years of the share issue. This condition should be satisfied.

As BDL is already trading, a qualifying purpose is spending the amounts for the purposes of carrying out relevant trading activities. In addition, the amounts spent must contribute to the maintenance or creation of employment. This appears to be the plan with any funds raised by BDL.

For EIIS, the company must be an unquoted company and it must be tax resident in Ireland or an EEA state. The company must not be carrying on trades which do not qualify such as financing activities, (unless trading internationally), professional service companies, dealing in or developing land, forestry or operating/managing hotels. BDL's trade should be a qualifying trade.

From BDL's perspective, the maximum investment by all investors is €5,000,000 per annum subject to a lifetime limit of €15,000,000.

Qualifying Shares for EIIS include all classes of new shares, including preference shares.

4

### *From the investor perspective*

Income tax relief is given in full in year of investment. EIIS relief only relieves income tax and not USC or PRSI.

The qualifying investment made by an individual cannot exceed €500,000 each year, (minimum is €250), subject to those shares being held for a minimum of 7 years or €250,000, subject to those shares being held for 4 years.

Both a husband and a wife may make EIIS investments of up to the maximum amount, but both must have sufficient income in their own right to cover investment. Any unused balances can't be transferred between spouses. Any unrelieved amount in excess of the limit can be carried forward and utilised in following year.

To be a qualifying individual for investment purposes, the individual must be Irish resident and not connected with the investee. Where the individual or their relative/ associate owns any share capital, loan capital, voting rights or rights to the assets on a winding up within the company, then the individual would be deemed to be connected to the company.

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### (b) Clive's income tax savings

Taxable earnings (Sch E)	€130,000
Less EIIS in 2021	(€70,000)
Taxable income	€60,000

2

Taxed as follows:	
€35,300 x 20%	€7,060
€24,700 x 40%	€9,880
	€16,940
Less PAYE estimated for 2021	(€42,700)
Income tax refund due	€25,760

3  
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Clive must hold the shares for 4 years to avoid clawback of the income tax relief.

(c) Elaine would not have suffered any income tax at the time of the grant of the options as they are short options. That is, the options must be exercised within 7 years.

In 2021, when she exercises the options, income tax will fall due.

5,000 shares x €6.50	€32,500
Less 5,000 x €3.00	€15,000
	€17,500
Income tax at 40%	€7,000

Net after tax proceeds from exercise of share options €10,500.

4

Elaine can gift this money to Simon tax free.

Simon can then use his director's loan account to put this money into BDL. The €10,500 can then be extracted tax free from BDL at any time.

3

The due date for the income tax on the share options is due within 30 days of the exercise.

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## SOLUTION 4

(a) In respect of the pension accrual, it should be noted that any increase in the pension accrual from the beginning of the accounting period to the end of the accounting period should be added back. Therefore, €150,000 should have been added back in the corporation tax computation for the year ended 31 December 2021. 1

In respect of the acquisition of the patent, the relief for Intangible Assets in accordance with Section 291A TCA 1997 is relevant. Section 291A provides for capital allowances against trading income for companies incurring capital expenditure on the provision of intangible assets for the purposes of a trade. The scheme applies to a broad range of intangible assets (e.g. patents) which are recognised as such under generally accepted accounting practice (GAAP) and which are listed as 'specified intangible assets' in the tax legislation. These include any patent among other things. 1

Companies are allowed claim the same amount as amortised through the statement of Profit or Loss account each year or the company can claim relief over 15 years: 7% for 14 years and then 2% in the 15th year. 1

The asset must actually be in use at the end of chargeable period in which the expenditure is incurred. 1

There exists a cap on the amount of relief that may be claimed in an accounting period. The level of deduction cannot exceed 80% of the trading income of the relevant trade for the accounting period, (so the remainder of that trading income is taxable). The cap merely limits the deductible amount in a given accounting period, with any unused excess carried forward for use in later years. 1

If a company borrowed to purchase intangible assets, the interest is also allowable as an expense. Both the Capital allowances and interest can only reduce profit by 80%. 1

If a company wishes to avail of relief under s291A, it must make a claim within 12 months of the end of the accounting period in which the expenditure giving rise to the claim is incurred. Therefore, the claim for CPL needs to be submitted by 31 December 2021. 2

Below is the correct corporation tax position for the year ended 31 December 2020. 1

S291 capital allowances	€	
Cost	4,500,000	
Amortisation per accounts	450,000	
Option to amortise over 15 years - less advantageous		
Amount of Cas available on intangible	450,000	1
Updated CT computation	€	
Tax adjusted trading profit - previously filed	160,000	
AB pension accrual	150,000	1
Amortisation already added back	0	1
	310,000	
Max s291 - amort and interest 80% of 310k	248,000	1
Interest expense per SoPL	(45,000)	1
CA on intang balance	(203,000)	1
	0	
CAs carried forward	247,000	1
Revised tax adjusted trading profits	62,000	
CT at 12.5%	7,750	
CT already paid	20,000	
Refund of CT after updates	(12,250)	1

**(b)** The filing deadline for the corporation tax return for the year ended 31 December 2020 was 21/23 September 2021. This return was filed on time and corporation tax of €20,000 was paid. The revised CT liability is €7,750. Therefore, the company has overpaid its CT.

2

As it is still 12 months from the due date of the filing of the corporation tax return for the period ended 31 December 2020, the company is still within the self-correction window. The self-correction window will close on 21/23 September 2022.

2

Therefore, the corporation tax return for the period ended 31 December 2020 may be self-corrected without penalty as long as:

- Revenue is notified in writing of the adjustments to be made, and the circumstances under which the errors arose before 21/23 September 2022.
- A computation of the correct tax. No extra tax is due as a result of the amendments and therefore no statutory interest is payable.

1

It should be noted that the deadline for making the s291 capital allowance claim is 31 December 2021 and therefore it is advised the Revenue are contacted regarding the updated corporation tax calculations as soon as possible and certainly before 31 December 2021.

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## SOLUTION 5

### (a) FILE NOTE

Date: 13 September 2021  
Re: Loss relief and inheritance of shares and building

### **Janice - Capital acquisitions tax (CAT) implications of the inheritance of the shares and the building**

CAT business relief should be considered in respect of the shares and building inherited by Janice. The conditions for business relief are:

1. The assets must be relevant business assets. Relevant business assets include unquoted shares of a trading company, provided the recipient satisfies one of the following conditions on the valuation date, after taking into account the gift/inheritance received:

- he must control more than 25% of the voting rights of the company in their own name; or
- the company is, after taking the gift or inheritance, under the control, i.e. more than 50%, of the recipient and his relatives; or
- he controls 10% or more of the issued share capital of the company and has been a full-time working director or employee of the company throughout the period of five years ending on the date of the gift.

This test is satisfied in respect of the inheritance which Janice has received.

2. Relevant business assets for the purpose of CAT business relief also includes land and buildings, which immediately before the gift were used wholly or mainly for the purpose of a business carried on by a company controlled by the recipient. To qualify for relief under this heading, the disposer must also simultaneously transfer shares in the company which qualify as relevant business property. The buildings must continue to be used for at least six years by the company to avoid a clawback of the relief.

Therefore, the office building will qualify for CAT business relief as it is transferred at the same time as the shares to Janice.

3. A minimum period of ownership test must be satisfied by the disposer. To qualify for business relief, the asset must have been continuously in the beneficial ownership of the disposer, for two years immediately prior to the date of the inheritance – This condition is satisfied.

3

For full business relief to apply, there would need to be no investment assets held by HLSL.

As some element of business relief is available, Janice should be aware of the six year clawback provisions for business relief. If the qualifying property ceases to be qualifying business property or is sold within six years of the valuation date, then the relief originally granted is withdrawn.

2

Taxable value of shares	Qualifying property	Non-qualifying property	Total
Market value	1,650,000	350,000	2,000,000
Less liabilities	(210,000)		(210,000)
Taxable value before relief	1,440,000	350,000	1,790,000
Business relief	(1,296,000)	0	(1,296,000)
Taxable value	262,350	350,000	612,350

2

**Taxable value of office building**

Market value	250,000	
If BR available	(225,000)	
Taxable value	25,000	1

**CAT computation**

Taxable value	637,350	
Less remaining Group A	(335,000)	1
Taxable	302,350	
CAT at 33%	99,776	1
		10

**Niall – corporation tax advice**

In respect of Digital Mapping Ireland Ltd (DMI), this company does not form part of the corporation tax group as it is only a 70% subsidiary. However, as the company is ceasing to trade, terminal loss relief should be available in addition to the current year and prior year offsets (section 396A and section 396B).

		€
Loss offsets:	Trading loss	
YE31 Dec 2020	PY S396A	100,000
	CY S396B	(10,000) 1
	PY S396B	4000X25%=1000/12.5% (8,000) 1
Remaining loss available for terminal loss relief		4000X25%=1000/12.5% (8,000) 1
		74,000 1

DMI can have the remaining loss carried back and offset against trading profits for the 3 years preceding the terminal 12 month period.

		€
Loss available for terminal loss relief		74,000
YE 31 Dec 2019	Trading profit covered by S396A claim	
YE 31 Dec 2018	€90,000 trading profits	(74,000) 1
YE 31 Dec 2017	No terminal loss remaining	

Therefore, there should be no corporation tax liability for DMI for the YE 31 Dec 2020 and 2019. A refund can be claimed in respect of the CT paid for the YE 31 Dec 2019 of €2,250. In addition, as a result of the terminal loss relief claim, a refund of CT of €9,250 should be claimed for the year ended 31Dec 2018.

In respect of NHP and NHD, both these companies form part of a CT group due to their greater than 75% common parent. This means that NHD's current year trading loss of €99,000 can be offset against NHP's trading profit and the remaining balance can be used on a value basis against NHP's rental income.

Trading loss available in NHD	99,000	
Less S420A against trading profit in NHP	(70,000)	
Balance remaining	29,000	
Rental income YE31 Dec 2020 in NHP	10,000	
At 25%	2,500	
Amount of trading losses required 2,500/0.125	20,000	

Neither NHD nor NHP will have any CT to pay for the YE 31 Dec 2020.

Amount of unrelieved trading losses in NHP €9,000 carried forward in NHP against future trading profits. 3