ADVANCED TAX STRATEGY

STRATEGIC LEVEL EXAMINATION

APRIL 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 12 August 2021. You are a recently qualified CPA working in a large practice in Cavan. Yesterday, you and one of the partners of the practice met with Sinead, Malachy and Frank McLaughlin. They have all been clients of a much smaller practice in Cavan for many years and their current accountant has advised them that he is retiring. During the meeting, they bring you up to speed on their tax advice queries and needs.

Sinead and Malachy are married and they each own 40% in Cavan Holdings Ltd (HoldCo). They are both Irish tax resident and they have one Irish tax resident daughter, Lucy (18). Frank is Malachy's only sibling and his French tax resident company, McLaughlin Paris Ltd, owns the remaining 20% of HoldCo. Frank is a French tax resident individual, and he owns 100% of McLaughlin Paris Ltd. Sinead and Malachy are both directors of HoldCo whereas Frank is really seen as an investor in the company. He does not hold any employments/directorships in HoldCo or any company in the group.

HoldCo owns two trading subsidiaries: 80% of Cavan Bespoke Furniture Ltd (CBF) and 100% of Irish Interiors Ltd (IIL) and 100% of a dormant company, Expert Furnishings Ltd (EFL). All companies are Irish tax resident and have a 31 December year end.

The share capital of HoldCo is €100 (100 €1 ordinary shares). In September 2021, in order to avoid a close company surcharge, HoldCo is proposing to make a final dividend of €50,000 which will be paid directly to the ordinary shareholders.

Cash flow projections, based on the most pessimistic outlook, show that HoldCo may suffer cash flow difficulties next year. If this most pessimistic outlook does become reality Malachy says that he is not concerned about it as he can lend HoldCo €100,000, if needed, and charge the company a 15% rate of interest. He says his money is not earning him any interest in the bank anyway.

CBF has operated two separate trades for the last five years. The company's original trade of designing and making bespoke dining/living room furniture is still going strong. However, CBF's other trade, which involves the manufacture and fit out of bespoke walk-in wardrobes has been hit hard by the COVID pandemic. This trade has carried forward Case I tax losses of €198,000, inventory of €76,000 and plant and machinery qualifying for capital allowances which it acquired in 2017 at a cost of €100,000 (which has a tax written down value of €50,000). Sinead and Malachy propose to restructure the group such that CBF only carries on one trade, its original trade. Therefore, it is proposed that CBF will transfer the bespoke walk-in wardrobe trade to EFL.

Sinead's father died in 2019 and he left her €500,000. After she had paid her capital acquisitions tax liability, Sinead used €260,000 of her inheritance to purchase a holiday house in County Kerry. This amount included all costs associated with the acquisition including stamp duty and legal fees. Sinead immediately carried out an extension to the property which cost her €65,000. The holiday house, as a result of the extension, has increased in value to €400,000.

Lucy has just turned 18 years old and is going to university. As an incentive, Sinead has decided that she may, subject to tax advice, transfer the holiday home and €50,000 cash to a trust for Lucy. Sinead would like Lucy to eventually have outright ownership of the house and some cash but feels that this should only happen once she is 25 years old. Sinead has identified her two CPA qualified friends to act as trustees and as they are very busy in their own lives, she has agreed that the trust will pay them €400 each per annum for their time needed to manage the affairs of the trust. Sinead does not anticipate that the holiday home will be rented out or will generate any income for the trust. Under the terms of the trust, the trustees would not have the power to accumulate income. However, she does anticipate that it will increase substantially in value over the next five years.

REQUIREMENT:

(a) Advise on the Irish tax considerations associated with the payment of the dividend to the shareholders of Cavan Holdings Ltd (HoldCo). The withholding tax implications for HoldCo should also be considered.

(8 marks)

(b) Advise on the tax implications of the potential €100,000 loan to HoldCo from Malachy. The tax implications for both HoldCo and Malachy should be considered.

(8 marks)

(c) Advise on the tax implications arising on the transfer of the trade from Cavan Bespoke Furniture Ltd (CBF) to Expert Furnishings Ltd (EFL).

(12 marks)

(d) Advise Sinead of the tax implications for herself and Lucy associated with the creation of the trust for Lucy as well as the tax implications associated with the transfer of assets from the trust to Lucy when she reaches 25 years old. Sinead would also like to know if there are any tax savings associated with this trust being created by her will, in the event of her death before Lucy turns 25.

(12 marks)

(Total: 40 Marks)

Question 2

It is now 3 August 2021 and you have recently been engaged by John Montgomery to advise him on whether he is likely to have any Irish tax exposure on a number of proposed disposals.

John is UK domiciled having lived in Aberdeen, Scotland since birth until he moved to Cork in November 2016 when he turned 58 years old. John is an engineer, and he has vast experience working with the main players operating in the oil exploration business in Scotland. John decided to take up a job with an Irish based oil exploration company which operates from the Port of Cork as the salary package they offered was too good to refuse. He fully intends to return to Aberdeen when he reaches retirement age of 65. John has rented out his penthouse apartment in Aberdeen while he is in Ireland. He has generated a rental profit of €14,000 per annum since he moved to Ireland. The rental income has accumulated in his UK bank account and he has never extracted any funds from this account. John has never submitted a self-assessment tax return in Ireland and Irish Revenue are not aware that he has earned this rental income in Scotland.

John has two children, Janice and Mark. His daughter Janice is 30 years of age. She is a GP and has just been offered the option to buy into a practice in Aberdeen. John would like to help Janice by giving her €350,000 (GBP£315,000 equivalent) of his savings. This money is currently held in a deposit account at his former local bank in Aberdeen. Janice expects the deal to complete before the end of 2021 or her prospective new partners have said that it might be better to wait for her to buy into the practice at the beginning of the 2022/23 UK tax year which commences on 6 April 2022. John can give her the money as soon as it is needed but has not transferred it to Janice yet as he wanted to get some Irish tax advice regarding the timing of the transfer.

John's son, Mark, is married to an Irish lady and they have lived in Dublin for the last 8 years. Mark is a quantity surveyor and he advised John to buy a commercial unit in Sandyford in October 2014 for €300,000 plus legal and stamp duty fees of €28,000. The unit has been recently valued at €600,000 and John is considering putting it on the market. He would like to raise some Euros to give Mark the equivalent of what Janice is to receive as a gift from him. That is, €350,000. Mark and his wife have never received any gifts or inheritances before.

REQUIREMENT:

(a) Advise John on his Irish income tax exposure on the rental income he generates from his apartment in Aberdeen, Scotland.

(5 marks)

(b) Advise on any capital acquisitions tax (CAT) planning points which John should consider in respect of his proposed gift to Janice.

(7 marks)

(c) Advise John of the tax implications of his disposal of the commercial property and the gifting of €350,000 to Mark. You should provide tax advice regarding the timing of the disposal of the commercial property and tax planning regarding the gifting of €350,000 to his son.

(8 marks)

(Total: 20 Marks)

Question 3

It is 3 August 2021, and you are Dorothy Quigg, a newly qualified Certified Public Accountant working in the tax department of a medium sized practice in Dublin. A colleague of yours has sent you some tax specific queries which he would appreciate your expert advice on.

Queries re the file of Brian Hegarty

Brian Hegarty has recently been widowed. He has lived in Ireland all his life to date and is Irish domiciled. However, he needs some tax advice regarding his assets before heading away to travel the world. He has no set timeframe for which he intends to be away from Ireland. However, it is likely to be a few years, at least, commencing in January 2022.

Brian purchased a 6-acre field in 2009 for €35,000. Brian's youngest son has just returned home after university and he has commenced work as a teacher in a local primary school. Brian would therefore like to transfer at least an acre of the 6-acre field to him to enable him to build a house on it. As his son has a permanent teaching position locally, Brian feels that he is likely to settle here now. Brian has had a one-acre site on his field, which is close to the road and which enjoys good views of the countryside, valued at €100,000 with the remaining acreage valued at €175,000. Brian's son has never received any gifts or inheritances previously. The valuer and other legal fees regarding the transfer have been quoted at €2,300.

Brian owns 30% of an Irish tax resident publishing company. Brian purchased the share for €6,000 in 2004. Brian is purely an investor and he has never worked in any capacity for the company. The shares have increased in value substantially in recent years as the company has been very innovative and has embraced digitalisation. The company does not own any Irish land/buildings and the bulk of its current value is due to the intangible assets it owns. Brian has recently been offered €650,000 for his shares. Brian has asked for confirmation if he can save tax by selling these shares in say two/three years' time while he is on his travels.

Brian bought a shop building in Carlow in 2017. During 2019 he did renovation work to the building at a cost of €227,000 inclusive of VAT. The renovation work was completed in December 2019. Brian did not pay any VAT on the original purchase of the building, but he did register for VAT in respect of the renovations. He claimed back all the VAT incurred on the renovations. Despite advertising the building for leasing, Brian has been unable to find a suitable tenant. However, he has recently been offered €400,000 (plus VAT, if any) for the building by a local accountant who intends to run his accountancy practice from the premises. Brian thinks that he should take this offer as he does not want the hassle of renting property in Ireland while he is on his travels.

REQUIREMENT:

Draft a tax memo to your colleague advising on the following:

(a) The tax implications, for Brian and his son, of the proposed site transfer. Your answer should consider the capital gains tax, capital acquisitions tax and stamp duty implications as well as outlining the conditions of any relevant relief which may be available on the transfer. **(9 marks)**

(b) The VAT implications for Brian of the proposed sale of the shop building in Carlow. **(6 marks)**

(c) Any anti-avoidance rules that Brian should be aware of in respect of the disposal of shares in the Irish publishing company for €650,000. **(5 marks)**

(Total: 20 Marks)

Question 4

It is mid October 2021 and you have been transferred to the tax department of a medium sized accountancy practice in Donegal. It is a Monday morning, and you meet with Roisin Stewart, a successful engineer who runs a trade involved in the manufacture and sale of bespoke security devices.

At the meeting, Roisin states that she has been told by one of her larger customers that she should think about running her business as a company in order to protect her personal assets. Therefore, she has come to this meeting for some tax advice.

At the meeting you are able to access the office server and see her latest accounts:

Assets and Liabilities as at 30 September 2021

	€	€
NON-CURRENT ASSETS		
Trading premises	100,000	
Plant & equipment	95,000	
		195,000
CURRENT ASSETS		
Inventories	75,000	
Trade receivables	111,000	
Cash at bank	35,000	
		221,000
Total assets		416,000
CURRENT LIABILITIES		
Trade payables		45,000
Total owner's capital & liabilities		371,000

Notes in respect of non-current assets:

1. The market value of the premises is €250,000. The building originally cost €100,000 in 2010.
2. The plant and equipment is valued at its net book value. This equates to the tax written down value and the market value of the plant & equipment.
3. A reasonable estimate of the market value of the goodwill associated with this established trade is €200,000.

Roisin would like to do the transfer, subject to your advice, on 1 November 2021. She has been running her business as a sole trade for 15 years, but she feels that her debtors balances now are so high, it worries her sometimes.

She is happy to transfer all her sole trade's assets and liabilities, other than cash, to her new company RS Engineering Ltd (RSEL). In consideration for the transfer, RSEL will issue 1,000 €1 ordinary shares at par fully paid.

You mention at the meeting that some clients in the past have created a director's loan on incorporation. Roisin is open to this idea, but she would like to understand the tax consequences first. Roisin is clear that her main reasoning for incorporation is for the limited liability protection it offers. You agree that, from a tax perspective, it is important that the incorporation is undertaken for bona fide commercial reasons.

While you are analysing the figures, Roisin gives you the following information:

- She is now 50 years old and is starting to think about her retirement.
- Due to some bad debt write offs in the year ended 30 September 2021, Roisin's sole trade business had €120,000 of trading losses unused.
- Roisin has plenty of savings as she never needed all the profits from her business to fund her standard of living.
- Roisin has never disposed of any business assets previously.

REQUIREMENT:

You have been asked to prepare a tax briefing memo for the next meeting with Roisin. Your memo should include the following:

(a) Details of the tax advantages of incorporating her sole trade business. You should also highlight some of the disadvantages associated with incorporation.

(4 marks)

(b) Details of the tax consequences of Roisin incorporating her trade and transferring all assets and liabilities to her new company, RS Engineering Ltd. You should refer to the income tax, capital gains tax, stamp duty and VAT consequences of such a transfer.

(9 marks)

(c) Details of the capital gains tax consequences of Roisin incorporating her trade in return for RS Engineering Ltd issuing shares and creating a €100,000 director's loan balance in her favour.

(7 marks)

(Total: 20 Marks)

Question 5

You are the internal accountant working in the finance department of a trading company in Limerick called Ireland Hygiene Ltd (IHL). The company carries on research and development (R&D) activities and R&D claims have been made regularly in the past.

The company specialises in hand washing technologies for hospitals and nursing homes. With the increased focus on hand washing because of the COVID pandemic, the company has recently registered a patent for a new efficient dispensing technology which is going to be sold directly to the Public Health Services in a number of European countries. You have recently attended a tax training day where you heard it mentioned that some companies in Ireland may be taxed at an effective rate of 6.25% on their corporate profits. IHL does all of its R&D in-house.

IHL was set up in 2010 by two sisters, Una and Fiona Galbraith. They each own 50% of the issued share capital and are full time working directors. Una is the elder sister, and she has just turned 65. Una does not have any children and she is thinking of retiring soon. She would like to sell her shares to her niece, Judith, who is Fiona's daughter. Una's shareholding is worth €3,200,000 but she is only going to charge her niece €100,000. Judith has a degree in marketing, and she has been working full time for IHL for the past six years. The shares in IHL are the only business assets Una has ever owned and Judith has never received and gifts or inheritances to date. IHL does not hold any investment assets.

A colleague of yours in the finance department normally prepares the bi-monthly VAT returns. As your colleague is on annual leave, you are tasked with preparing and submitting the July-August 2021 VAT return. You also review the VAT files for the previous return, and you notice that the VAT was claimed on an invoice in respect of a car which is used by the marketing director solely. The car cost €30,750 inclusive of 23% VAT. You are sure that this is incorrect and are unsure how to fix this error.

REQUIREMENT:

You have been asked to prepare a tax report for Una and Fiona dealing with the following:

(a) Details of the corporation tax relief which enables companies in Ireland to be taxed at 6.25%.

(5 marks)

(b) Details of the tax consequences of Una selling her shares in Ireland Hygiene Ltd to her niece, Judith. You should refer to the capital gains tax, capital acquisitions tax and stamp duty consequences of the sale and identify any tax planning points.

(12 marks)

(c) Details of how the VAT error should be dealt with.

(3 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) The dividend of €50,000 will be allocated as follows:

Sinead	€20,000
Malachy	€20,000
McLaughlin Investments UK Ltd	€10,000

As Sinead and Malachy are Irish tax resident individuals, Cavan Holdings Ltd (HoldCo) is required to withhold dividend withholding tax (DWT) of 25% (€5,000 each) and pay it over to Revenue within 14 days of the dividend. A DWT return should be filed by the same date.

3

Sinead and Malachy will be subject to income tax in respect of the dividends at their marginal rates. The dividends are schedule F income. The 25% DWT is allowed as a tax credit in their income tax computations. Where they are top rate taxpayers, additional tax will be due (i.e. another 15%) as the top rate of tax is 40%. PRSI and USC will also be due.

2

In relation to the dividend to McLaughlin Paris Ltd (MLP), no DWT should need to be withheld as the dividend is paid to a non-resident company which is resident in France (i.e France is in the EU/Ireland has a Double Tax Treaty with the France it is treated as a relevant territory) and is not controlled by an Irish resident person or persons. MPL is French tax resident and it is controlled by Frank who is a French tax resident individual.

3

8

(b) HoldCo is a close company as it is controlled by its two Irish tax resident directors, Malachy and Sinead.

As a close company, the anti avoidance provisions need to be considered. In respect of interest paid to Malachy, a director of the company, the following implications arise:

1

Tax implications for HoldCo
Interest paid to directors who own more than 5% of shares is not fully deductible in the tax adjusted trading profit calculation. The amount deductible is limited to the lower of 13% of either:

- Total loans from all such directors in the company (€100,000 x 13% = €13,000); or
- The nominal amount of issued share capital plus the share premium account, at the beginning of the accounting period (€100).

Therefore, €40 is the maximum amount of deductible interest in HoldCo. This amount will also be subject to withholding tax at the standard rate of tax (i.e. 20%).

3

The excess interest paid to Malachy will be treated as a distribution and will not be tax deductible from HoldCo's perspective. That is, it will need to be added back. DWT will need to be withheld by HoldCo on the gross distribution. This will be payable by HoldCo to HMRC on the 14th day in the month following the deemed distribution.

2

Tax implications for Malachy

In respect of any interest received, which will be minimal, Malachy will be taxed under Schedule D Case VI at his marginal rate of tax. He will also be subject to income tax, under schedule F, in respect of the deemed distribution. He will get credit in his income tax computation for any withholding tax suffered and paid to Revenue by HoldCo.

2

8

(c) No CGT arises on the transfer of inventory. The plant and machinery are being transferred for less than cost therefore there will be no CGT implications.

No stamp duty should arise as plant & machinery should transfer by delivery. 1

The position for CBF in terms of the assets which it claimed capital allowances on needs to be considered. As CBF is transferring its business, it will be deemed to have ceased its trade. The cessation of a trade can result in a balancing allowance/charge implications. In addition, the ability to transfer the trading losses forward in CBF which relate to the bespoke walk-in wardrobe trade needs to be considered.

S400 TCA 1997 provides relief where a trade carried on by one company is transferred to another company as a going concern. S400 TCA 1997 provides for the transfer of capital allowances and losses from one company to another where a trading company ceases to carry on a trade and following that cessation, another company carries on the same trade. Such a transfer is allowed only where there is substantial common identity of not less than 75% in the ownership of the trade both before and after the change.

Therefore, as both companies are held more than 75% by HoldCo, the ownership requirement is met. EFL will be treated as stepping into the shoes of CBF for the purpose of capital allowances and losses. EFL will therefore be treated as disposing of assets at their tax written down value.

CBF will not be entitled to claim terminal loss relief in respect of the trading losses in the last 12 months of trading before transfer.

5

Section 401 of the Taxes Consolidation Act 1997 contains restrictions on the use of trading losses in certain circumstances where within a three-year period there is both a change in ownership of a company and a major change in the nature of the trade carried on by the company. In such cases trading losses carried forward will not be available. This may be relevant going forward if there are any significant changes to the trade of manufacturing and fitting out bespoke walk-in wardrobes. Where EFL does not change the nature of the trade acquired, no restriction should apply and EFL will be able to use the trading losses carried forward against any future profits of the same trade.

3

There are no VAT consequences in respect of the transfer of the trade. Under s20(2)I VATA 2010 'Transfer of Business relief' VAT is not chargeable on a transfer if the following conditions are satisfied:

1. The transfer must constitute an undertaking or part of an undertaking capable of being operated on an independent basis and
2. The purchaser is entitled to 100% VAT recovery and
3. The purchaser is a VAT registered person – it is therefore essential that EFL registers for VAT prior to the transfer of the trade to it.

3

12

(d) Trust

Sinead will be setting up a fixed trust for Lucy. 1

CGT for Sinead on creation of trust

CGT needs to be immediately considered by Sinead as she is transferring assets during her lifetime to a fixed trust. Market value will be imposed in respect of all assets being gifted.

Sinead's immediate CGT exposure on the Kerry holiday home is outlined below:

	€
MV of the Kerry property	400,000
Less cost	(260,000)
Less enhancement	(65,000)
	75,000
Less annual exemption	(1,270)
	73,730
CGT at 33%	24,331

The market value at the date the asset is transferred into the trust forms the base cost for the trustees on future disposals made by the trust.

There will be no CGT on the transfer of cash to the trust.

If the trust is created by Sinead's will, should she die before Lucy is 25, no CGT will arise. The market value at the date of Sinead's death will be the relevant base cost for the trust of the holiday home.

3

Stamp duty for fixed trust

Stamp duty at a rate of 1% will apply to the transfer of the holiday home to the trust. Therefore, stamp duty of €4,000 (€400,000 x 1%) will be due within 44 days of the transfer. The trust will, therefore, need funds to discharge this stamp duty liability. This may be paid by the €50,000 cash she proposes to transfer to the trust. There will be no stamp duty on for the trust in respect of the cash transferred.

If the trust is created by Sinead's will, should she die before Lucy is 25, no stamp duty will arise. 3

CAT for Lucy on creation of fixed trust

CAT will not arise on the creation of a fixed trust because Lucy will not hold an interest in possession in the settled property. Lucy's beneficial interest in possession only arises when the trust property is appointed to her.

Tax implications during the life of the trust

As there is unlikely to be much, if any income (possibly small amount of interest on the cash after stamp duty and trustee fees), income tax for the trustees is unlikely to be an issue. However, it should be noted that the trustees will not be entitled to claim an income tax deduction in respect of their annual trust expenses of €400 each, in the calculation of taxable trust income.

1

Tax implications of the appointment of the trust assets to Lucy when she is 25

When the trustees appoint the trust assets to Lucy at 25, they are deemed to dispose of the property at that time and immediately reacquire it at its market value. It is noted that Lucy anticipates that the market value of the holiday home will increase over the next five years. The trustees must pay CGT on any increase in value between the acquisition cost (€400,000+€4,000 stamp duty and the deemed market value at the date of appointment. The rate of CGT will be 33%.

If the trust is established by will as a result of Sinead's death before Lucy reached 25, CGT will be due on the difference between the value of the holiday house at the date of her death and the market value at the date of appointment.

No CGT will arise in respect of the appointment of any cash from the trust. 2

CAT can only arise when a person takes a beneficial interest in possession over property. Therefore, Lucy will be subject to CAT when the holiday home and cash are transferred from the trust to her. Market value of the holiday home and the amount of cash at the time of appointment will be used for her CAT computation. Lucy will be entitled to a Group A threshold. She will therefore potentially have a CAT liability at this point especially as Sinead thinks that the property will increase in value over the next five years.

Where CAT and CGT arise on the appointment of assets from the trust, the CGT/CAT same event credit allows for the CGT paid by the trustee to be credited against any CAT payable by Lucy. The relief will be clawed back if Lucy disposes of the assets within two years of the date of the gift or inheritance.

Stamp duty does not arise on the appointment of assets from the trust to Lucy when she is 25 years old. 2

12

SOLUTION 2

(a) John is UK domiciled/non-Irish domiciled. John been Irish tax resident since 2017 having moved to Ireland so late in 2016 that he would not have triggered Irish tax residency in that year.

1

Non-Irish domiciled individuals who are Irish tax resident for a year of assessment will be liable to Irish income tax on Irish source income and on foreign income to the extent that the funds are remitted to Ireland.

2

This is known as the Remittance Basis of Taxation. Only remittances out of income are liable to income tax. John needs to be careful to ensure that he does create a mixed fund and remit funds to Ireland. If the remittance is from a mixed fund, the remittance will be deemed to come firstly from income and will be taxed in Ireland as Schedule D Case III, and balance from capital.

Good tax planning advice for non-domiciled individuals such as John would be to hold two separate bank accounts to clearly differentiate between the income generated while he is Irish tax resident from the capital he already owned before becoming Irish resident.

Therefore, if John has not remitted any money to Ireland from the account in which the rental income is paid into, no Irish tax exposure should arise for him on this Scottish rental income.

2
5

(b) John is a UK domiciled individual. Janice appears to be UK tax resident and domiciled.

John intends to gift £350,000 cash which is held in a UK bank account to Janice.

The Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003) provides that an individual who takes a gift is generally within the charge to Irish CAT if:

1. the disponer (John) is resident or ordinarily resident in Ireland at the date of the disposition; or
2. the beneficiary is resident or ordinarily resident in Ireland at the date of the gift – Janice appears to be UK resident; or
3. the assets which are the subject of the gift are Irish assets - £350,000 is located in UK bank account is not an Irish asset.

2

However, special rules apply when dealing with non-Irish domiciled individuals such as John. The CAT legislation provides that a non-Irish domiciled person is only treated as being resident or ordinarily resident for CAT purposes if the individual has been resident in Ireland for five consecutive tax years preceding the year of assessment in which the gift falls, and the individual must be resident or ordinarily resident in Ireland on the date of the gift.

2

John became Irish tax resident in 2017. 2021 will be his fifth year of Irish tax residence. Therefore, if he transfers the £350,000 to Janice in 2021, the gift should not be subject to CAT.

1

However, if he waits until 2022 to make the gift or if he remains tax resident in Ireland in 2022, he will have been resident in Ireland for the previous five years and therefore his worldwide estate will be within the scope of CAT.

2
7

(c) As the commercial property is located in Ireland, it will be subject to Irish CGT.

Below is the potential CGT exposure that John has in respect of the commercial property.

Potential CGT for John

	€	**€**	
Proceeds		600,000	
Less			
Base cost	300,000		
Acquisition costs	28,000		
		(328,000)	
Gain		272,000	
Less annual exemption		(1,270)	
Gain after annual exemption		270,730	
CGT at 33%		89,341	2

However, there is a CGT relief included within the Irish tax legislation which provides that gains on land and buildings in the EEA, purchased between 07 December 2011 and 31 December 2014 can be sold exempt from CGT when certain conditions are met. As John purchased the commercial property in November 2014, this relief may be relevant.

2

Since 1 January 2018, if such property is held for a period of 4 years (previously 7 years), it will qualify for full relief on any gain arising on disposal. Where the property is held for more than 7 years, relief is reduced in the same proportion that the period of 7 years bears to the period of ownership.

Therefore, it is advisable that John disposes of the property as soon as possible and certainly on or before October 2021 so that the full gain can be exempt from CGT.

2

Any gift to Mark will be subject to Irish CAT as Mark is Irish tax resident. Mark will however be entitled to a Group A threshold of €335,000 and the €3,000 annual exemption. Any amount above this will be subject to CAT at 33%. Mark's wife will also be entitled to a Group C threshold and a €3,000 annual exemption. Therefore, if say €12,000 of the €350,000 was gifted to Mark's wife, no CAT would be due.

2

8

SOLUTION 3

MEMO
TO: Colleague
FROM: Dorothy Quigg
RE: Brian Hegarty – tax advice

(a) Market value will be used for CGT, CAT and stamp duty.

Proceeds (Deemed)	100,000	
Less costs of disposal	(2,300)	
	97,700	
Less cost		
€35,000 x $\frac{€100,000}{€100,000 + €175,000}$ = €12,727	(12,727)	
Potential gain before annual exemption	84,973	2

However, a CGT exemption is available where a parent transfers land to his/her child to enable that child to build a principal private residence for himself/herself. The relief only applies to land transfers with a market value of up to €500,000. The size of the site is limited to 0.4047 hectares/one-acre in addition to the house site itself.

2

If the child subsequently disposes of the land (other than to a spouse or civil partner) and the land does not contain a dwelling house which was constructed by the child since the land was acquired, and which has been "occupied" by the child as his/her only or main residence for a period of at least three years, then the relief will be clawed back. If a clawback arises, the chargeable gain which would have accrued to the parent shall accrue to the child in addition to any gain arising to the child on the disposal.

3

From a stamp duty perspective, Brian's son will have a liability of €100,000 x 7.5% = €7,500. This will be due within 44 days of the transfer.

1

From a CAT perspective, no CAT should arise. Brian's son will be deemed to have used up €100,000 - €7,500 = €92,500 of his group A threshold.

1
9

(b) Brian must charge VAT on the sale of the shop building in Carlow. The development work which was completed in December 2019 essentially makes the property 'new' for VAT purposes.

This is because the development work cannot be classified as 'minor development'. That is, the development work exceeds 25% of the consideration for the supply of the property (€400,000 plus VAT of 54,000).

2

The supply of a developed property will be liable to VAT if the five-year rule applies. That is, a property is considered new for a maximum period of five years from the date on which the property itself or a development of the property (other than a minor development) is completed. It does not matter if the property has been occupied or not. As the development work on the property was complete in December 2019, VAT must be charged on any sale of the property up to December 2024.

2

VAT will have to be charged by Brian and paid across to Irish Revenue. The reverse charge mechanism is not available where the property is considered new. A copy of the capital goods scheme (CGS) record should be provided to the purchaser. From a CGS perspective, the refurbishment will have an adjustment period of 10 years.

Where the prospective purchaser is VAT registered and has full VAT recovery, as the accountant is likely to be, the VAT should not be a cost. However, there will be a cashflow disadvantage as the VAT will need to be paid across to Brian and then reclaimed as input VAT in the relevant VAT return.

2
6

(c) Brian will need to be conscious of the temporary non-residents rules which apply to the disposal of certain assets. This anti-avoidance measure was introduced to counter tax-planning structures whereby individuals, such as Brian, move temporarily offshore to avoid large CGT liabilities arising on the disposal of company shares.

Brian is not entirely sure of how long he is going to be travelling for and therefore, if he wishes to reduce his exposure to Irish tax, he needs to time his share disposal and return to Ireland carefully.

1

His shareholding in the Irish publishing company will be regarded as "relevant assets" as his holding in a company is 5% or more of the value of all the company's issued share capital. In addition, as his shareholding is worth €500,000 or more, this will also mean that his shares are treated as relevant assets for the purposes of the anti-avoidance legislation.

If Brian disposes of all or part of his shares during a period of not more than five intervening years from the date of his departure from Ireland, then he will be liable to CGT on this disposal.

2

The CGT charge arises by deeming the relevant assets to be disposed of at their market value on the last day of the year of departure. If there is an increase or decrease in the market value of the assets between the last day of the year of departure and the date they were disposed of, then the market value of the assets on the date they were disposed of will be used for the purposes of the CGT charge.

The CGT charge should be included in Brian's return and the tax arising thereon must be accounted for in the year in which he is again taxable in Ireland.

2
5

SOLUTION 4

MEMO
TO: Roisin Stewart
FROM: CPA
RE: Incorporation of engineering business

(a) As you are aware, the incorporation of your sole trade business will enable you to benefit from limited liability. However, there are some other advantages to be considered:

- Corporation tax rate is 12.5% for trade income
- Company offers more scope for pension planning. Company can obtain tax relief for funding director/employee pensions (however tax relief for special contributions may need to be spread). Unlike the limited scope for pension planning for a sole traders where tax relief is limited to earnings and age.
- Pension funding by company is not treated as a BIK for employee/director.
- It is easier for a company to raise finance for expansion. For example, a company has the ability to raise capital through Employment and Investment Incentive Scheme (EIIS) and Start-Up Relief for Entrepreneurs (SURE).

2

There are however some disadvantages that you may need to consider:

- Close company implications
- More filing requirements
- Withdrawing cash by directors/shareholders (via salary/dividends) has tax implications – however, as you have noted, you do not need all the income from your trade to fund your standard of living. Therefore, the benefit of the lower corporation tax rate will not be lost.

2
4

(b) Tax consequences of Roisin incorporating his trade and transferring all assets and liabilities of his sole trade business for shares in a new company.

Income tax consequences

- The transfer of the engineering trade to ES Engineering Ltd (ESEL) will mean a cessation of the sole trade for Roisin.
- Where the sole trade ceases in 2021, Roisin will be subject to the cessation rules in the 2021 tax year.
- The taxable profits of the year prior to the year of cessation (2020) may be revised to an actual basis if those are higher than previously assessed.
- Terminal loss relief may be available. This should enable any losses generated in the last 12 months of trading to be set back up to three years against Case I trading income only.
- No balancing allowances or charges should arise on the incorporation as the TWDV is similar to the market value of the plant and machinery transferring.

2

CGT consequences
The transfer of the chargeable assets, including the property, goodwill and plant & machinery of the sole trade business to RSEL may give rise to a CGT liability for Roisin.

Market value will have to be imposed for the purposes of CGT as Roisin and RSEL are connected (s547 & 549 TCA 1997).

No CGT should arise in respect of the transfer of the trade receivables or cash (if any) to RSEL. No CGT should arise on the transfer of the plant & machinery as their net book value (which is lower than cost) is equal to their market value.

Therefore, the potential CGT exposure is on the premises and the goodwill inherent in the business is calculated below:

CGT calculation on incorporation

	Market value	**Base cost**	**Gain**
	€	€	€
Premises	250,000	100,000	150,000
Goodwill	200,000	0	200,000
			350,000
Less annual exemption			(1,270)
Gain			348,730

Retirement relief is not available to Roisin as she is not 55 years old.

However, incorporation relief (s600 TCA 1997) may be an option. This relief allows the CGT arising on the disposal of business assets to a new company to be deferred. Incorporation relief is available provided that the business and all its assets other than cash are transferred as a going concern in consideration for the issue of shares in RSEL to Roisin. The deferred CGT will crystallise when Roisin eventually disposes of her shares in RSEL. Roisin's future base cost in the shares in RSEL will be reduced by the amount of the gain deferred (i.e. €348,730).

Therefore, where all assets are transferred to RSEL, no CGT should arise for Roisin.

It should be noted that the transfer of trade payables/creditors to the company is concessionally treated by Irish Revenue as not to be consideration other than for shares for the purposes of the s600 incorporation relief. This is only applicable where full incorporation relief is available.

Where s600 TCA 1997 is claimed on incorporation, Roisin's period of ownership of the sole trade will count towards the minimum 10 year ownership and working/director period required under s598/599 TCA for retirement relief on any future disposal of the shares in RSEL by Roisin.

4

Stamp duty consequences

RSEL will incur stamp duty on the transfer of assets to it. A 7.5% rate of stamp duty will apply to the transfer of the premises, goodwill and trade receivables. Plant & Machinery can pass by delivery and so there should be no stamp duty exposure in respect of them.

1

VAT consequences

The VAT consequences associated with the transfer of the trade need to be considered. A VAT exemption is available where a trade and its assets are transferred as a going concern (s20(2)(c) and s26 of VAT Consolidation Act 2010 (VATCA)). This relief is commonly referred to as the transfer of business relief. The relief is only available where the following conditions are satisfied:

- The purchaser (RSEL) is a VAT registered person – therefore before the transfer of the trade takes place, RSEL should be registered for VAT; and
- Is entitled to claim a full (i.e. 100% recovery) input credit for any VAT charged to it; and
- The transfer must constitute an undertaking or part of any undertaking capable of being operated on an independent basis.

Where the transfer of business relief is available, it effectively deems that the transfer is not a supply of goods and therefore it falls outside the scope of VAT.

2

9

(c) CGT consequences of Roisin incorporating her trade and transferring all assets and liabilities for shares in a new company plus cash of €100,000.

Where cash is received by Roisin from RSEL in addition to shares, the amount of any CGT that can be deferred is limited to:

$$\frac{\text{Consideration in the form of shares}}{\text{Total gross value of assets taken over}} \times \text{Chargeable gain}$$

Market value of trade at transfer:

	€
Goodwill	200,000
Trading premises	250,000
Plant & Machinery	95,000
Inventories	75,000
Trade receivables	111,000
Gross MV of assets transferred	731,000
Less:	
Trade payables	(45,000)
Director's loan account	(100,000)
Net value of assets transferred	586,000

3

The value of the shares is therefore €586,000. The total consideration is €731,000. As Roisin is receiving both shares and cash, the concession for genuine trade payables is not available. Therefore, the CGT is:

	€	
Gain	348,730	
Less deferred gain		
348,730 x 586,000/731,000	(279,556)	
Gain	69,174	2

This gain should be subject to CGT at 10% as Roisin will qualify for entrepreneur relief:

- she is disposing of assets which she has used for the purpose of a qualifying business (i.e. a business other than a land dealing/development or investment business)
- she has owned the assets for at least 3 of the last 5 years,
- she has not disposed of chargeable business assets giving rise to chargeable gains in excess of €1 million since 1 January 2016 and
- the disposal was for bona fide commercial reasons and not as part of a scheme/arrangement to avoid tax.

Roisin's base cost in the shares of RSEL will be:

	€	
Value of shares	586,000	
Less	(279,556)	
Reduced Value of Shares	306,444	2
		7

SOLUTION 5

(a) The knowledge development box (KDB) is the relevant relief which was mentioned at the tax training day. Where a company, such as Ireland Hygiene Ltd (IHL) qualifies for the KDB relief, it is entitled to a 50% allowance on its qualifying profits, which in effect, results in a 6.25% corporate tax rate on those qualifying profits. In other words, 6.25% CT rate would apply to profits derived from patented or similarly protected inventions.

There are a number of conditions which must be satisfied to avail of the KDB detailed below.

The KDB applies to "qualifying assets", being intellectual property. Among other things, Intellectual property is defined as an invention protected by a qualifying patent or certain supplementary protection certificates. Therefore, IHL's recently patented technology should fit the definition of a qualifying asset.

1

The KDB relief will apply to qualifying profits made in the course of a specified trade (as defined) which consists of one or more of the following:

1. the managing, developing, maintaining, protecting, enhancing or exploiting of intellectual property;
2. the researching, planning, processing, experimenting, testing, devising, developing or other similar activity leading to an invention or creation of intellectual property; or
3. the sale of goods or the supply of services that derive part of their value from activities described in (i) and (ii), where those activities were carried on by the relevant company.

In order to ascertain the amount of profits arising from qualifying assets which can avail of the KDB relief, the formula below is used:

$$\frac{QE + UE \times QA}{OE}$$

Where:
QE is the qualifying expenditure on the qualifying assets.
UE is the uplift expenditure – as IHL carries out its own R&D, UE will be 30% of the qualifying expenditure.
QA is the profit of the specified trade relevant to the qualifying asset (before taking account of any KDB allowance).

2

The income arising from the qualifying assets is deemed to be the income of the specified trade. Any expenses incurred in earning the overall income from the qualifying assets must be attributed to the specified trade and this will necessitate the making of apportionments on a just and reasonable basis, so that the ultimate benefit of the loss similarly is similarly reduced.

IHL must make a claim for KDB relief within 24 months of the period end to which the claim relates.

IHL must maintain detailed records which sufficiently documents and traces all expenditure and income linked to the qualifying asset. Such documents should be retained for a period of six years, from the end of the accounting period.

The KDB is in addition to existing tax benefits for intellectual property such as research and development relief and the capital allowances available in relation to intangible assets.

The KDB will be granted only where the qualifying assets are the result of qualifying R&D activities that have been carried out by the entity claiming the tax benefit. Therefore, claiming the KDB should be a natural extension for those companies already claiming the R&D tax credit on an annual basis.

2

5

(b) CGT for Una

Given Una's age (over 55), retirement relief should be available.

Market value will be imposed due to the fact that this is a disposal at undervalue and is between connected persons.

Judith should qualify as a favourite niece and therefore be treated as a child. For the purposes of retirement relief, under section 599 TCA 1997 a child includes a niece or a nephew who has worked substantially on a full-time basis in the business for the five years ending with the date of disposal.

2

Full relief from CGT will only apply where the disposal is to a child by an individual who is aged 55 to 65. Where the individual making the transfer is aged 66 or over, an upper limit of €3 million on retirement relief will be imposed. Una is now 64. She should ensure she makes the transfer of the shares before she turn 66.

2

The relief applies where the disposal is made of a qualifying asset which have been owned by that individual for the qualifying period.

Qualifying assets include shares in a family trading company, where the shares 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/she has been a full-time working director of the company.

IHL is a family company as Una owns at least 25% of the shares.

If Una transfers the shares before she turns 66, she will get full retirement relief. If she holds off until she is 66, only marginal retirement relief will be available.

2

Stamp duty for Judith

Judith will have to pay stamp duty based on the market value of the shares at a rate of 1%. That is €3,200,000 x 1% = €32,000.

2

CAT for Judith

Judith should be entitled to claim business relief in respect of the shares as she will hold more than 25% in the company after she receives the gift and Una has held the shares for more than five years before the gift.

Business relief takes the form of reducing the market value of qualifying business property by 90%.

Judith should also be treated as child of Una's as she qualifies as a favourite niece as she has worked full time in the company for five year.

2

Market Value		3,200,000
Less SD	(32,000)	
Less consideration		(100,000)
		3,068,000
Business relief		(2,761,200)
		306,800
Less AE	(3,000)	
Less Group A		(303,800)
Taxable value		nil

2

12

(c) Special rules apply to the VAT recovery position in respect of the purchase of passenger motor cars. The VAT legislation provides that a partial VAT input credit (limited to 20% of the VAT incurred on purchase) may be allowed for purchase of company cars, provided the company car is used for at least 60% of the business and it must also be within A, B, or C of the VRT categories. If the motor vehicle is category E or F there is no VAT deduction available.

Therefore, further information is required in respect of the VRT category of the car and the percentage business use.

1

The amount of VAT charged on the motor vehicle is €5,750 (30,750/1.23 x 23%). If the car is in the VRT categories E or F or if it is not used 60% for business the amount of VAT that should not have been reclaimed is €5,750.

However, if the car is used at least 60% of the business and is within the A, B, or C VRT categories then the max amount of VAT that should have been reclaimed is €5,750 x 20% = €1,150. Therefore, the amount overclaimed is €4,600.

1

As the VAT underpayment is less than €6,000 in either case, it can be corrected through the July/August 2021 VAT return.

1

3