

# ADVANCED TAXATION

## PROFESSIONAL 2 EXAMINATION - AUGUST 2020

### 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

3.5 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.

### Reading Format

During the reading time you may highlight text and write notes on the examination paper, however, you may not commence writing on the answer field until your Supervisor tells you to do so. Please read each Question carefully.

### Marks

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

### Answers

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.

# ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - AUGUST 2019

**Note: You should ignore PRSI and USC in ALL questions.**  
**If you make an assumption in any question, please state that assumption clearly.**

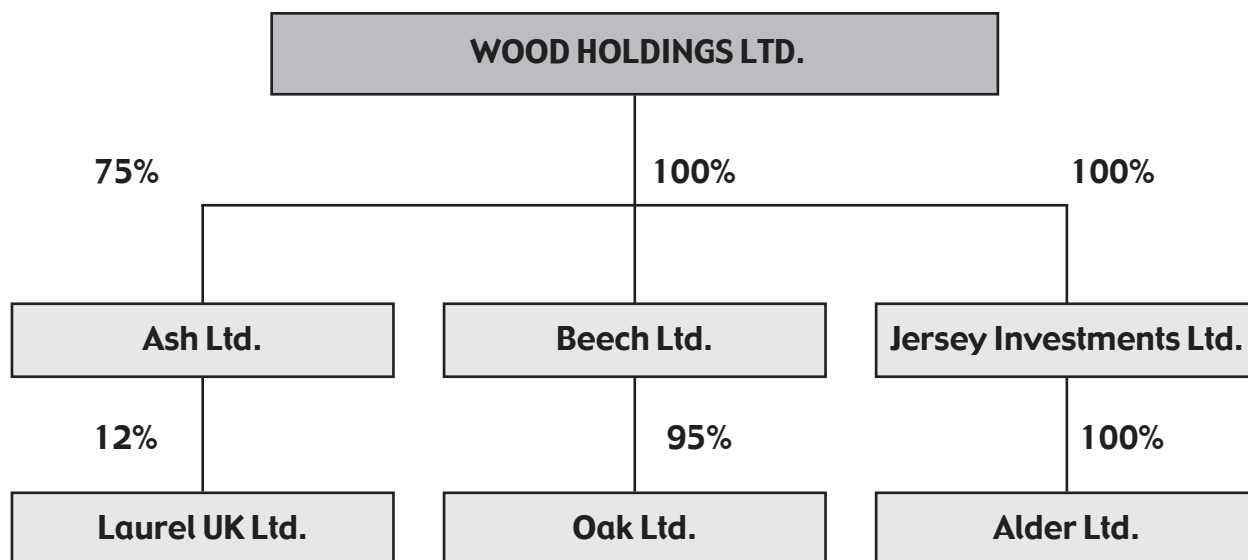
## Case study 1

1. It is 14 April 2020. You are Janice Hill, a recently qualified CPA, who started working as the tax manager with Wood Holdings Ltd. (WHL) last month. WHL is the parent company of the Wood Group. You had a meeting yesterday with the group Chief Financial Officer (CFO), James. A number of tax queries arose as a result of the discussions and you now have to prepare a report for James in order to provide the required tax advice.

### Details of the Group structure

All companies are incorporated and tax resident in Ireland, with the exception of Laurel UK Ltd. (LUL) which is a UK tax resident company, and Jersey Investments Ltd., which is incorporated and resident in Jersey.

All companies in the group prepare their accounts to 31 March, except for Oak Ltd. (OAK), which prepares accounts to 30 June each year.



The issues discussed at the meeting are outlined below:

### Issue 1:

James provided you with the draft profit and income positions for the Irish trading companies in the group: WHL; Ash Ltd. (ASH); Beech Ltd. (BEECH) and OAK. He confirmed that Alder Ltd. (ALDER) is a dormant company which holds some vacant industrial units. WHL has experienced very tough trading conditions for the last few years and as a result the company regularly experiences cash shortages. WHL is keen to minimise any tax payments.

Details of the trading profit/(loss) position for the companies are outlined below.

	WHL YE31 Mar '19 €	ASH YE31 Mar '19 €	BEECH YE31 Mar '19 €	OAK YE30 June '19 €
Trading profit/(loss)	(360,000)	210,000	52,000	(75,000)
Case I losses forward	(40,000)	-	(56,000)	-
Interest income	4,000	2,000	8,000	-
Rental profits	80,000	52,000	8,000	-

**Issue 2:**

OAK currently owns a building which it acquired for €300,000 in 1999. The market value of the building is €450,000 (plus VAT, if any) but OAK's trade has now outgrown this building. James would like to know the tax consequences of OAK transferring this building to WHL, free of charge. His plan is that WHL will use the building to try to turn the company's trade around.

James would also like ALDER to transfer its vacant industrial units to OAK. ALDER operated its trade from the industrial units until trade ceased in late 2017. The industrial units are ideally placed for OAK to use immediately. ALDER hired a construction firm to develop these units which were complete in December 2016. The site on which they were built was bought for €130,000 in January 2012 and the cost of construction was €250,000, plus VAT. ALDER claimed back the VAT on all construction costs. Similar units in the industrial estate recently sold for €600,000, plus VAT. OAK will pay ALDER market value for the units.

**Issue 3:**

James is currently in negotiations with a multinational company who is interested in acquiring LUL. As already indicated, LUL is a UK-based trading company involved in flat-packed furniture market. LUL operates from rented premises in Birmingham, and the company's only non-current assets are its plant and machinery. ASH acquired its shareholding in LUL for €600,000 on 18 December 2019. ASH purchased LUL as part of the Group's planning for BREXIT. However, James now feels that the offer on the table is too good to refuse. The multi-national has offered €1,000,000 for the 12% shareholding.

**REQUIREMENT:**

Draft a tax report for James, the Group Chief Financial Officer, advising on the following:

- (a) The tax payable by Wood Holdings Ltd. (WHL), Ash Ltd. (ASH), Beech Ltd. (BEECH) and Oak Ltd. (OAK) based on the results provided. Your answer should include a loss memorandum for each company showing the utilisation of losses and the amount of losses carried forward, if any.  
(16 marks)
- (b) The tax implications associated with the transfer of the building from OAK to WHL, and the transfer of the industrial units from Alder Ltd. to OAK. You should include details of any reliefs which are relevant.  
(18 marks)
- (c) The Irish tax exposure for ASH on the proposed disposal of its 12% shareholding in Laurel UK Ltd. Tax planning advice should be provided with regard to the timing of the disposal.  
(6 marks)

**[Total: 40 marks]**

- 2.** You are Emily and are employed in the tax department of a large professional services firm in Dublin. You have been doing the tax compliance work for Mixer Ireland Ltd. (MIL), Mixer Retail Ltd. (MRL) and Mixer Distribution Ltd. (MDL), for a number of years. All three companies are part of a large European group. You met with the Group finance director, Javid, yesterday. Javid had a number of queries regarding the groups exposure to Irish tax.

MIL, MRL and MDL are all trading companies involved in the manufacture, distribution and selling of Irish-branded drinks, both soft drinks and alcoholic drinks. Traditionally, sales have been confined to Irish customers. However, Javid would like to see the brand expand internationally. In particular, Javid stated that the marketing director for the Group has highlighted the Middle East as a potentially good market to enter.

With this in mind, Javid has identified Lisa Duffy, a key member of the marketing team in Ireland for many years, to travel to various Middle Eastern countries before the end of 2020 to meet potential key customers. Lisa will travel direct from Dublin to the various locations and the proposed dates of travel are as follows:

- United Arab Emirates (UAE) – 1 August 2020 travel to UAE, spend 20 full days in the UAE, and then travel home to Dublin on 22 August 2020.
- Qatar - 2 October 2020 travel to Qatar, spend 12 full days in Qatar, and then travel home to Dublin on 15 October 2020.

Lisa will carry out the duties of her employment in the Dublin office on all remaining working days in 2020. Her gross annual salary is €172,000 and she also has use of a company car, which equates to a benefit in kind of €7,500.

MIL, MRL and MDL all trade with one another on a regular basis. As a result, a considerable number of invoices are issued on a monthly basis between the Irish trading companies and separate VAT returns are submitted in respect of each company. Javid is interested in streamlining tax administration in Ireland, as much as possible.

At the meeting, Javid then talked about another Group company, Party Supplies UK Ltd. (PSUL), a UK-trading company which sells party decorations. The company recently set up an office in Dublin which is operated from rented premises. At present, one employee works in the Dublin office and is currently involved in the preparation of research reports for the Irish party supplies market. The research is only in the initial phase and no potential customers have been identified yet. However, once potential customers have been identified, the employee will make contact, negotiate prices, and then finalise contracts with these Irish customers on behalf of PSUL.

#### **REQUIREMENT:**

Draft a memorandum for Javid, the Group finance director. Your memo should include the following:

- (a) Advice regarding any tax relief available to Lisa in 2020 in respect of the duration she will work overseas. You should include details of the conditions of any relevant relief and calculate how much relief Lisa should be entitled to, if any.  
(10 marks)
- (b) Advice regarding VAT Group registration in Ireland. Javid would like to understand the benefits of VAT Group registration, the conditions that must be satisfied, and the practical implications of VAT Group registration.  
(5 marks)
- (c) Advice in respect of Party Supplies UK Ltd. (PSUL) and whether it currently has, or will create in the future, a taxable presence in Ireland.  
(5 marks)

**[Total: 20 marks]**

- 3.** Today's date is 14 April 2020. You have just come from a meeting with your clients, Michael and Adelle Kearney.

Also present at the meeting was Michael and Adelle's solicitor. The meeting was called urgently as Michael has not been feeling well recently. He therefore wishes to assess his financial situation and identify any actions he should take to ensure his wife, and their son (Conor, who is 16 years old) and daughter (Elaine, who is 30 years old) are provided for, should anything happen to him. Michael plans to update his will next week. Both Michael and Adelle are Irish tax resident and domiciled. They have not given any previous gifts to their children.

Michael and Adelle jointly own their family home in Malahide, Dublin. This property is mortgage free and has a current market value of €1,000,000. Michael currently has a savings deposit of €100,000 in his own name. He also owns a number of other assets which are held in his name solely. Details of the cost and the current market value of each asset are outlined below:

	Cost (€)	Date acquired	Current market value (€)
Commercial property – Dublin 8	230,000	2006	450,000
Commercial property – Dublin 16	200,000	2005	500,000
Residential – holiday home in Kerry	250,000	2001	375,000
Quoted shares and securities	360,000	Various	650,000

Michael plans to leave the quoted shares and securities to Adelle.

The two commercial properties in Dublin are rented out and generate an annual income of €75,000. No borrowings are attached to these properties. Michael and Adelle's son, Conor, has recently been diagnosed with mild learning difficulties. Medics have advised that Conor should be able to live a full and independent life. However, despite this recommendation, Michael is concerned about his son's ability to adequately provide for himself financially. Michael has decided that he would like to create a trust which will be established by his will. Adelle and Jacqueline (Michael's sister who lives in Dublin), have agreed to act as trustees. They, as trustees, will have the power to decide how the rental income is applied to fund Conor's future living expense requirements. Michael plans to give the trustees full flexibility in respect of the future sale of the properties, any reinvestment decisions and the timing of any ultimate transfer of benefit to Conor.

Elaine is married to an Italian and has been living in Italy for the last six years. Elaine has no intention to ever return to Ireland to live and she now regards Italy as her permanent home. Michael intends to leave his holiday home in Kerry to Elaine. He believes that she will be able to generate a rental income stream from this property.

Elaine has two children. Michael would like to give them the maximum amount in his will that they can receive tax-free. He also has queried whether he should make an immediate cash gift to his grandchildren. Any balance of cash remaining after his grandchildren have received a gift/legacy will be left to Adelle.

#### REQUIREMENT:

Analyse the tax implications of Michael's will plans, as follows:

- (a) Advise Adelle of her potential tax exposure on the assets she is to receive. (2 marks)
- (b) Advise Adelle and Jacqueline (Michael's sister) on tax issues they will need to consider in respect of the proposed trust for Conor. Your answer should discuss the relevant income tax, capital gains tax, capital acquisitions tax, discretionary trust tax and stamp duty issues. (10 marks)
- (c) Advise on the tax implications for Elaine in respect of the proposed inheritance from Michael and also the tax implications for her if she rents out the property. (4 marks)
- (d) Provide any tax planning advice that is relevant in respect of the gifts and/or inheritance to be received by Michael's grandchildren. (4 marks)

**[Total: 20 marks]**

4. It is 14 April 2020, and you work in an accountancy practice in Donegal. You recently met Eddie Doherty, a long-

standing client of the practice. Eddie is aged 69 and he is the 100% shareholder in Elite Engineering Ltd. (EEL). EEL is a trading company involved in the manufacture of bespoke engineering solutions for commercial buildings.

Prior to 2013, Eddie operated his business as a sole trade since 1995. On 31 December 2012, he incorporated his trade. Partial incorporation relief was claimed by Eddie on the incorporation of his trade. Therefore, Eddie's base cost in the shares of EEL is €250,000.

Eddie has worked tirelessly over the years to build up the value of EEL, and has been a full-time working director since incorporation. His hard work has paid off recently as an unconnected third party has made Eddie an offer of €2,425,000 for his shares in EEL. Eddie declined this offer, as he intends to gift his 100% shareholding in EEL to his brother's daughter, Geri. EEL prepares its financial statements to 31 December each year and Eddie would like to make the transfer to Geri in the next 6 months. He has never previously disposed of any assets, except for an apartment in Dublin a few years ago.

Geri is a civil engineer and has worked full-time for EEL since 1 June 2014, when she joined EEL as a graduate. Geri is aware that her uncle hopes that she will take over the reins someday and, therefore committed to working full-time in the company for the foreseeable future.

The following is an extract from EEL's draft accounts for the year ended 31 December 2019:

Trading stock	€750,000
Investment property	€375,000
Plant and machinery	€1,125,000
Goodwill	€375,000
Less liabilities	(€200,000)
	<u>€2,425,000</u>

**REQUIREMENT:**

Prepare a tax report for Eddie, providing:

- (a) Tax advice regarding the tax implications for him, as a result of the potential transfer of his 100% shareholding in Elite Engineering Ltd. to Geri. Your answer should include all reliefs available to reduce Eddie's tax liability, as much as possible. (10 marks)
- (b) Tax advice for Geri in respect of the gift of the 100% shareholding in Elite Engineering Ltd. from her uncle, Eddie. All relevant tax reliefs should be considered in your answer. (10 marks)

**[Total: 20 Marks]**

5. It is 14 April 2020 and you work in an accountancy practice in Athlone. You recently met Joe Loftus, a new client, who contacted you for tax advice after receiving a Revenue audit letter in respect of all tax heads for 2017.

Joe is Irish tax resident and is 65 years old. Joe is a widower and has one son, Niall, who is 26 years old. Niall has just finished college, having graduated with a Green Cert agricultural qualification from Teagasc last month. When Joe's wife died in January 2009, she left her entire estate to him. This estate comprised some cash and her half share in the premises from which they carried on their publican trade.

Joe has operated his pub business as a sole trader since 2009, and has always prepared his own tax returns. As a result of receiving the Revenue audit notification, he has asked you to review his tax affairs for 2017. He has confirmed that his 2017 income tax liability and return were submitted online to Revenue on 10 November 2018. As soon as you see the calculation of taxable trading profit, you note that it is strange that there is no depreciation adjustment. When you look at the statement of profit or loss, you can clearly see that depreciation of €16,500 is expensed. You have rerun the income tax computation with the depreciation addback included and Joe's total income tax liability (including USC and PRSI) increases from €9,500 to €17,420 as a result of the addback.

Joe bought a farm in 2009 after his wife died. The farm consists of a farmhouse (cost: €380,000) which he has lived in since he purchased it, farm sheds (cost: €90,000) and 50 acres of farmland (cost: €600,000). Stamp duty and legal fees associated with the purchases were €6,500 for the farmhouse and €9,200 for the farm sheds and land. Joe purchased the farm because of its tranquil setting and because Niall had shown an interest in farming, from a young age. Joe never carried on a farming trade as the pub business takes up all his working time.

Joe would like to give the farm to Niall. Ideally, he wishes to do this as soon as possible. However, if there are major tax consequences, he will pass the farm to Niall in his will.

Joe intends to gift Niall €150,000 cash to get his farming business started, as well as his farming assets (including the farmhouse, sheds and land). Joe recently received the following market valuation for his farming assets: farmhouse €400,000; farm sheds €100,000 and the farmland is valued at €610,000.

Niall is very excited about the prospect of running his own farm. With the recent knowledge acquired from gaining his agricultural qualification at college, he is confident that he can make a good living from running the farm full-time as a business. The only asset which Niall owns personally is his car, which has a current market value of €3,000.

**REQUIREMENT:**

- (a) Advise Joe regarding how he should deal with the Revenue audit notification and what level of penalty, if any, is likely to be imposed by Revenue as a result of the tax default. Your answer should also provide clear advice regarding what co-operating with Revenue means. (8 marks)
- (b) Provide advice regarding the tax implications for Joe and Niall in respect of the lifetime transfer of cash and the farming assets. (12 marks)

**[Total: 20 marks]**

**END OF PAPER**

## SUGGESTED SOLUTIONS

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND

# ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - AUGUST 2020

### SOLUTION 1

#### TAX REPORT

To: James – group CFO  
From: Janice Hill  
Date: April 2020  
Re: The Wood Holdings Group

#### Issue 1 - losses

##### WHL – Corporation Tax Computation Period to 31/3/2019

	€
Case I profits	Nil
Case III income	4,000
Case V income	80,000
Liable to corporation tax	84,000
Corporation tax @ 25%	21,000
Less: loss relief on a value basis	(21,000)
Corporation tax payable	Nil

The loss forward of €40,000 in WHL is carried forward to be used against trading income of the same trade in WHL.

(4 marks)

#### WHL loss memo

1/4/2018 Case I loss fwd	40,000
Less losses fwd utilised	(NIL)
Losses c/fwd at 31/3/19	40,000 same trade only

Trading losses in YE31/3/19	360,000
Less s396B	(168,000)
Less s 420A to ASH	(192,000)
Losses fwd	Nil

(2 marks)

##### ASH – Corporation Tax Computation Period to 31/3/2019

	€
Case I	210,000
Less: group loss surrendered by WHL	(192,000)
	18,000
Case III	2,000
Case V	52,000
Liable to corporation tax	22,000
Corporation tax:	
€18,000 @ 12.5%	2,250
€54,000 @ 25%	13,500
Corporation tax payable	15,750

(2 marks)



## BEECH – Corporation Tax Computation Period to 31/3/2019

	€
Case I	52,000
Less: Case I loss forward	<u>(52,000)</u>
	(nil)
Case III	8,000
Case V	<u>8,000</u>
Liable to corporation tax	16,000
Corporation tax:	
€0 @ 12.5%	0
€16,000 @ 25%	4,000
Less s420B from OAK (NOTE 1)	<u>(2,000)</u>
Corporation tax payable	2,000

NOTE 1 - S420B claim – OAKs unclaimed loss amount is €75,000. Its value is €75,000 x 12.5% = 9,375. This loss can be claimed against the €4,000 corporation tax on the case III and case V income for the overlap period which is an amount of €2,000 (6/12 x €16,000 x 25%).

(4 marks)

### BEECH loss memo

1/4/2018 Case I loss fwd	56,000	
Less losses fwd utilised	<u>(52,000)</u>	
Losses c/fwd at 31/3/19	4,000	same trade only

### OAK – NIL CT as no profits/income liable to tax.

(2 marks)

OAK loss memo	
YE30/6/19 Case I loss	75,000
Less s420B to BEECH	<u>(16,000)</u>
Losses forward against OAK trade	59,000

(2 marks)

**(16 marks)**

## Issue 2 – building transfers

A capital gains tax (CGT) group comprises the principal company and its effective 75% subsidiaries form a CGT group.

A “principal company” is a company of which another company is an effective 75% subsidiary (directly or indirectly). A company is an effective 75% subsidiary of another company, the parent, if the parent:

1. owns, directly or indirectly, not less than 75% of its ordinary share capital;
2. is beneficially entitled to not less than 75% of any profits available for distribution; and
3. would be beneficially entitled to not less than 75% of the assets on a winding up.

(1 mark)

A CGT group exists where a principal company is itself an effective 75% subsidiary, it and all its effective 75% subsidiaries will be part of the same CGT group as its parent, even though a sub-sub-subsidiary of the ultimate parent may be less than 75% owned by that parent.

The member companies of a CGT group must be resident in Ireland, the EU/EEA or in a country with which Ireland has a double tax treaty, or be a company quoted on a recognised stock exchange.

In addition, the asset transferred must continue to be within the charge to Irish tax post-transfer.

Where a CGT group exists, relief is available where an asset is transferred between members. The transfer is deemed to occur at a price that would give rise to a no gain/no loss (NGNL) position. This is a compulsory condition.

For accounting purposes, the transfer may occur at the book value of those assets but for tax purposes, the consideration (if any) that actually passes is ignored. The tax relief is structured in such a manner that it is deemed to be at no loss/no gain.

Subsequently, if there is a disposal of an asset by a member of a group to a person outside the group and that asset had been acquired by the company making the disposal from another group member, the acquisition cost for the disposal is the original base cost and date of acquisition of the first member to acquire the asset.

(1 mark)

#### **Transfer of building from OAK to WHL**

OAK and WHL are in a CGT group. There is a potential gain on the disposal of €150,000 (before indexation which is available to 1/1/2003). However, as OAK and WHL are in a CGT group the building will move at NGNL and WHL's base cost will be €300,000 and the company will be treated as having acquired the asset in 1999, for any future chargeable gains computation which needs to be carried out if WHL sells the building to someone outside its CGT group. There will be a clawback of the CGT group relief if WHL leaves the group still holding that asset within 10 years following the transfer of that asset.

(4 marks)

There should be no VAT consequences of the transfer as the building is old and was bought over 20 years ago.

(2 marks)

From WHL's perspective, stamp duty needs to be considered. WHL and OAK are in a stamp duty group under section 79 SDCA 1999. Therefore, the transfer is exempt from stamp duty.

However, a 2 year clawback period exists for stamp duty relief.

(2 marks)

#### **Transfer of building from ALDER to OAK**

ALDER will be chargeable to corporation tax at an effective rate of 33% on the chargeable gain of €220,000 (i.e. €600,000 (MV) - €130,000 - €250,000).

ALDER and OAK are not part of a group for CGT purposes as ALDER is owned by a company resident in Jersey (not a DTA territory and not in EU).

(2 marks)

In terms of VAT, as ALDER hired a construction company to develop the units, this is the first sale since completion in December 2017. The units are therefore considered new for VAT as the first supply of the property is happening within five years since completion. ALDER will need to be charge on the sale at 13.5%. OAK should be able to claim back any VAT charged in its VAT return for the period which relates to the transfer date.

(4 marks)

OAK will need to consider stamp duty on the acquisition. Stamp duty at a rate of 6% will apply to the transfer. That is €600,000 x 6% = €36,000. This is payable with 30/44days of the transfer.

(2 marks)

CG50 clearance will also be required.

(2 marks)

**(20 marks - max 18)**

#### **Issue 3**

If ASH receives €1,000,000 for its shares in LUL then the company will potentially be subject to corporation tax at an effective rate of 33% on a €400,000 gain.

However, section 626B TCA 1997 (the participation exemption) provides an exemption from Irish CGT where a capital gain is made by a company on the disposal of a shareholding in a subsidiary. The exemption applies if the relevant conditions are met, and it is therefore not necessary that a formal claim for the exemption be made by the company making the gain.

(2 marks)

Certain conditions must be met before a gain can be exempt:

- The investor company (ASH) must have a minimum shareholding in the investee company (Laurel UK Ltd (LUL)) of at least 5% for a continuous period of at least 12 months in the two years prior to the disposal – ASH holds 12% so the minimum shareholding requirement is met. However, ASH only acquired the shares on 18 December 2019. Therefore, the 12 month holding requirement will not be met until 18 December 2020.

- LUL must carry on a trade. The primary tests are the proportion of net trading profits and the proportion of net trading assets, though other factors may be taken into account. These lesser considerations would include trading turnover as a proportion of gross receipts and the proportion of employees' time devoted to trading and non-trading activities.
- At the time of the disposal the investee company (LUL) must be resident in an EU Member State or a country with which Ireland has a tax treaty-this should be satisfied as LUL is UK resident.

The exemption does not apply on the disposal of a company with shares that derive the greater part of their value from land in Ireland. As LUL does not have any non-current assets other than its plant and machinery.

(2 marks)

It is therefore advised that ASH does not sell LUL until after 18 December 2020. By doing so, ASH will save €132,000 in corporation tax.

(2 marks)

**(6 marks)**

## SOLUTION 2

### MEMO

To: Javid

From: CPA

Date: April 2020

Re: Irish entities – tax queries

#### (a) Lisa Duffy

Lisa may be entitled to some income tax relief under the foreign earnings deduction (FED). FED does not provide relief from USC or PRSI. FED is purely an income tax relief which is available for individuals who temporarily carry out duties of their employment in certain countries.

(2 marks)

FED is available if an employee has worked at least 30 “qualifying days” in a tax year.

A qualifying day is one the whole of which is spent in a relevant states and is one of at least three consecutive days of presence in such relevant states. Both the UAE and Qatar are relevant states for the purpose of FED.

These qualifying days include weekends and can include days of travel between Ireland and the qualifying country.

(2 marks)

Lisa will therefore have spent 22 qualify days in UAE and 14 qualifying days in Qatar. That is 36 days in 2020.

(2 marks)

There is a cap of €35,000 on the amount of FED available.

Lisa’s specified amount for the FED is calculated as follows:

Specified amount =  $D \times E / F$  where

$D = 36$  (“qualifying days” in year of assessment)

$E = €172,000$  (excluding BIK)

$F = 365$  days (employee for 2020 in full)

Lisa’s specified amount for 2020 =  $36 \times 172,000 / 365 = €16,964$

Lisa’s tax saving as a result of FED is  $€16,964 \times 40\% = €6,786$ .

(2 marks)

A claim for repayment of tax must be made within four years after the end of the tax year to which the claim relates i.e. by 31 December 2024.

Lisa must apply for the relief, not her employer.

(2 marks)

**(10 marks)**

#### (b) VAT group registration

The granting of group VAT registration is at the discretion of Revenue. Revenue will generally seek to ensure that the following conditions are satisfied before permitting VAT group registration:

- two or more persons established in Ireland and at least one of them is a taxable person – this is satisfied as there are 3 Irish trading companies.
- the companies are closely bound by financial, economic and organisational links; and
- it is necessary or appropriate for the purposes of efficient and effective administration.

The Irish trading companies, MIL, MRL and MDL, should be able to satisfy these conditions and therefore VAT group registration should be allowed.

(2 marks)

MIL, MRL and MDL must jointly apply in writing to the VAT section of their local Revenue District to secure approval for group registration. This must be formally granted by Revenue and will generally only apply from the taxable period (where notifications have been issued from Revenue to the various parties). VAT group registrations cannot be backdated.

Once the VAT group is registered, a single group remitter must be nominated for VAT purposes. That company will be responsible for VAT compliance for the entire group. The group remitter must, therefore, lodge all VAT returns and make all payments for the entire group with the Collector-General.

An important benefit of being in a VAT group is that VAT invoices are not necessary in respect of transactions between the individual group members. VAT group registration will therefore reduce the administration burden associated with intra-group sales. Group registration can also help cash flow within the group. However, VAT invoices must be issued between group companies in respect of property transactions.

Each member in the group is jointly and severally liable in the event that timely payment of appropriate VAT is not made.

All VAT invoices issued by group members to third parties will show the VAT number of the individual company making the supply.

(3 marks)

**(5 marks)**

**(c) Party Supplies UK Ltd (PSUL)**

Article 5 of the Ireland/UK double taxation agreement (DTA) is relevant. Article 5 defines a permanent establishment (PE) as *“a fixed place of business in which the business of the enterprise is wholly or partly carried on”*.

Therefore, for a PE to exist for PSUL in Ireland, 3 conditions must exist:

1. there must be a place of business or facility;
2. the place of business must be “fixed”, i.e. must be a distinct place with a degree of permanence; and
3. the business of the enterprise must be undertaken through this fixed place of business.

Article 5 provides examples of a PE, which include a place of management, a branch office, a factory or workshop. PSUL has not created any of these yet in Ireland.

(2 marks)

Examples of what does not constitute a PE include the use of facilities solely for the purpose of storage, display or delivery of goods, or for the maintenance of a stock of goods solely for processing by another enterprise, or any combination of the foregoing if the overall activity is of a preparatory or auxiliary nature. As market research would be preparatory in nature, a taxable presence has not been created yet.

(1 mark)

However, Article 5(4) of the DTA deals with dependent agents. Once the employee begins to negotiate with customers regarding price and has the ability to finalise contracts with Irish customers in the name of PSUL, a PE in Ireland will be created as the employee will be regarded as a dependent agent.

(2 marks)

**(5 marks)**

### SOLUTION 3

- (a) Advise Adelle of her potential tax exposure on the assets she is to receive.

Any assets left to Adelle will be covered by the spousal exemption.

(1 mark)

- (b) Advise Adelle and Michael's sister on tax issues they will need to consider in respect of the proposed trust for Conor. Your answer should discuss the relevant income tax, capital gains tax, capital acquisitions tax, discretionary trust tax and stamp duty issues.

There will be no CGT or stamp duty implications associated with the creation of the trust as it will be created on his death.

#### **Tax considerations – Adelle and Michael's sister**

In respect of the rental income, the trustees will be required to account for income tax at the standard rate (20%) on the annual rental profits.

The trustees will also need to be aware of the 20% surcharge that will apply to the income of the trust if it is not distributed within 18 months of the tax year of assessment in which it arises. Such trust income must be grossed-up at 20% and the surcharge is applied to the gross figure.

Effectively this means that the surcharge is imposed on income that has already suffered tax at 20%, but no deduction is given for that income tax paid.

(2 marks)

Expenses of management of the trust are not deductible in computing the income tax liability but are deductible in computing the 20% surcharge.

Michael intends to give the trustees the ability to dispose of trust property. If the trustees dispose of trust property in the future, they will be required to account for CGT on any increase in the value of the properties from the date on which they were settled on the trust i.e. Michael's death.

(4 marks)

As the proposed trust is a discretionary trust, discretionary trust tax (DTT) needs to be considered. As Conor is currently 16, the DTT will not be an immediate concern.

There is a deferral of the DTT charges if the youngest of the settlor's children, who are potential beneficiaries under the trust, has not reached the age of 21. If the trust remains in place when Conor reaches 21, a once-off discretionary trust tax of 6% arises on the value of the trust property held in a discretionary trust. Thereafter, an annual 1% charge is levied on all property in the trust on 31 December each year. Half of the initial 6% charge will be refunded if all of the property of the discretionary trust is appointed within five years from the date on which the original 6% charge was triggered.

(4 marks)

#### **Tax considerations for Conor**

As Michael's will is intended to create a discretionary trust, a CAT event will arise each time the trustees appoint funds out of the trust to Conor for his upkeep/maintenance and a CAT liability will also arise when the assets of the trust are appointed from the trust to Conor. That is, when Conor takes a beneficial interest in possession to the assets of the trust.

In respect of any income distribution to Conor, as the trustees will have accounted for 20% income tax on the income, Conor will be taxed on the gross amount and he will be entitled to a credit for the 20% tax withheld by the trustees.

The Group A tax free threshold (currently €320,000) will be available to Conor.

(4 marks)

**(14 marks)**

- (c) Advise on the tax implications for Elaine in respect of the proposed inheritance from Brendan and also the tax implications for her if she rents out the property.

Elaine will be subject to Irish CAT as her father, the disponer, is Irish resident. The asset is also an Irish situs property which will always be within the scope of Irish CAT. Elaine will be entitled to a group A threshold of €320,000. She will therefore have a CAT liability of €18,150 (€55,000 x 33%). Irish Income Tax will be payable in respect of any rent obtained from the Irish property.

(2 marks)

Elaine should obtain Italian tax advice regarding her potential inheritance and potential future Irish rental income.

(1 mark)

**(3 marks)**

- (d)** Provide any tax planning advice that is relevant in respect of the gifts and/or inheritance to be received by Michael's grandchildren.

Michael's grandchildren are entitled to a group B threshold each of €32,500. However, Michael should consider giving them each €3,000 each per year during his lifetime as this amount can be covered by the small gift exemption.

**(2 marks)**

## SOLUTION 4

### (a) CGT position for Eddie

Retirement relief should be considered as it is a CGT relief on certain disposals of business assets by an individual aged 55 years or over.

Where the individual making the transfer is aged 66 or over, an upper limit of €3 million on retirement relief will be imposed. If the disposal is to a person/entity other than a child, by an individual who is aged 66 or over, then a €500,000 applies.

For retirement relief to be available, the disposal must be of a qualifying asset which is owned by that individual for the qualifying period.

Shares in a family trading company qualify for retirement relief 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. A company is a family company in relation to an individual who is disposing of the shares, he owns at least 25% of the shares.

Where the qualifying assets are shares in a family company, which is the case with Eddie's shares, and where the trade was previously run as a sole trade, and section 600 TCA 1997 relief on the transfer of a business to a company, then the period the business was run as a sole trade will also qualify for the purposes of the 10-year test. The period the individual ran the business as a sole trade will also count for the purposes of assessing if the working director test of 10 years ending on the date of disposal is satisfied.

Therefore, all of conditions for retirement relief are satisfied. (3 marks)

For the purposes of retirement relief, a child includes a niece who has worked substantially on a full-time basis in the business for the five years ending with the date of disposal. As Geri has worked full-time for the company since 2014, she should qualify as a child for retirement relief purposes and the €3,000,000 limit is relevant.

(1 mark)

However, as the statement of financial position contains investment assets, only a portion of the gain qualifies for retirement relief.

### Capital gain before retirement relief

Deemed proceeds	2,425,000
Less cost	<u>250,000</u>
Gain	2,175,000

Check max proceeds that can qualify for retirement relief - Sales proceeds x CBA/CA

$$2,425,000 \times \frac{2,250,000}{2,625,000} = 2,078,571 \text{ as less than €3m - full retirement relief}$$

Gain qualifying for RR	2,175,000	X	$\frac{2,250,000}{2,625,000}$	1,864,286
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Gain not qualifying for RR			$\frac{310,714}{2,175,000}$	
		Total gain		2,175,000

(3 marks)

Entrepreneur 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. Entrepreneur relief will not be available to Eddie due to the level of gain covered by retirement relief.

Therefore, CGT due will be €310,714 x 33% = €102,536.

Clawback for retirement relief applies for a six year period.

(3 marks)  
(10 marks)



**(b) Stamp duty and CAT for Geri**

Stamp duty will apply at a rate of 1%. Therefore, the amount of stamp duty due is €2,425,000 x 1% = €24,250.

(2 marks)

The shares in EEL should qualify for CAT business relief as they are unquoted shares of a trading company, provided the recipient, Geri, after taking into account the gift will control more than 25% of the voting rights of the company.

Eddie has also held the shares for more than five years and so the holding requirement for business relief is satisfied.

Geri can qualify as a favourite niece as she has worked in the business for five years. She will therefore be entitled to a group A threshold of €320,000.

Any type of business may be carried on by a company whose shares qualify as relevant business property, subject to the following exclusions: currency dealing, share dealing, dealing in land or buildings, or a business of making or the holding of investments. Although

To qualify for business relief, the shares must have been held by Eddie for five years. This condition is satisfied.

(2 marks)

In determining the amount of the value of a company which can qualify for relief, the value of business assets which were used wholly or mainly for the purpose of the business concerned can qualify for relief. EEL has some investment assets and the impact of these on the business relief available is as follows:

	<b>Qualifying property</b>	<b>Non-qualifying property</b>
Market value	2,250,000	375,000
Less payables	(200,000)	
Taxable value before relief	2,050,000	375,000
Business relief	(1,845,000)	
	205,000	375,000
Less stamp duty	(2,050)	(3,750)
Taxable value	202,950	371,250
Taxable value	574,200	
Less SGE	(3,000)	
	571,200	
Less Group A	(320,000)	
	251,200	
CAT at 33%	82,896	
CGT/CAT offset	(102,536)	
	0	

(4 marks)

Clawback for business relief is six years. That is the qualifying property must not cease to be qualifying business property or be sold (and not replaced with relevant business property) within six years.

Clawback for the CGT/CAT offset is two years.

(2 marks)

**(10 marks)**

## SOLUTION 5

### (a) Dealing with Revenue audit letter

It is advisable that Joe makes a qualifying prompted voluntary disclosure. There are many benefits associated with making a qualifying disclosure and these include: non-publication, non-prosecution and mitigation of penalties.

The level of penalty will depend on the behavioural category Joe's default falls into. The penalty is likely to be in the careless behaviour category as Joe failed to take reasonable care.

For the behaviour to be in the tax default category of careless behaviour without significant consequences, the tax shortfall must not exceed 15% of the total tax liability.

(3 marks)

It is estimated that Joe's liability will increase from €9,500 to €17,420. That is an increase of €7,920. As the shortfall exceeds 15% of the total tax liability, the default category will be careless behaviour with significant consequences.

(2 marks)

The qualifying disclosure must be in writing and signed by Joe or on behalf of Joe and must be accompanied by payment of underpaid tax and interest.

The qualifying disclosure must include the amounts of all liabilities to tax and interest in respect of the relevant tax heads and periods within scope of audit.

The likely penalty will be 20% where Joe makes a prompted qualifying disclosure and he co-operates fully with Revenue.

(3 marks)

Co-operation includes the following:

- having all books, records and linking papers available for the inspector at the commencement of the audit
- responding promptly to all requests for information and explanations;
- responding promptly to all correspondence; and
- prompt payment of the audit settlement liability.

(2 marks)

**(10 marks max 8)**

### (b) Passing the farm to Niall

Capital gains tax (CGT) will need to be considered for Joe. Joe is not entitled to retirement relief or entrepreneur's relief on the basis that he did not carry on a farming trade.

Therefore, his CGT position is summarised below:

- There will be no CGT on the cash that is gifted.
- The farmhouse should qualify for 100% principle private residence relief as Joe has lived there since he acquired the property.
- The following CGT exposure will arise on the farmland and sheds:

Market value of assets	710,000	
Less base cost	(699,200)	
	10,800	
Less annual exemption	(1,270)	
	9,530	
CGT at 33%	3,145	(3 marks)

Capital acquisitions tax (CAT) and stamp duty need to be considered for Niall.

#### Stamp duty

There will be no stamp duty on cash.

In respect of the farmhouse, farm buildings and land, the exemption from stamp duty for transfers to young trained farmers should be relevant.

Niall should meet all the required conditions:

- He is under the age of 35.
- He holds a relevant qualification – Teagasc green cert

- He intends to: spend at least 50% of his normal working time farming the transferred land, and retain ownership of that land, for a period of at least five years from the date of execution of the deed of transfer.

Therefore, no stamp duty should arise on the lifetime transfer of the assets from Joe to Niall. (3 marks)

### CAT

Ideally, Niall will qualify for agricultural property relief.

Niall will need to be a farmer by passing the 80% assets test.

	Total	Agric assets	non-agric
Assets held before inheritance			
Car	3,000		3,000
Assets included in inheritance			
Cash	150,000		150,000
Farmhouse	400,000	400,000	
Farm sheds	100,000	100,000	
Farmland	610,000	610,000	
	<u>1,263,000</u>	<u>1,110,000</u>	<u>153,000</u>
Percentage of agricultural assets			88%

(3 marks)

Niall will also need to pass the active farmer test. Niall should satisfy the required conditions as he will farm the agricultural property for a period of not less than six years commencing from the valuation date and he holds an agricultural qualification.

### CAT for Niall with AR

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Market value of AR assets	1,110,000
Less APR	(999,000)
	<u>111,000</u>
Cash	150,000
	<u>261,000</u>
Less Group A threshold	(320,000)
Taxable value	<u>0</u>
CAT at 33%	0

(3 marks)  
(12 marks)