cpa IRELAND

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - APRIL 2019

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, you must draw a clearly distinguishable line through the answer not to be marked. Otherwise, only the first three answers to Questions 2,3,4 and 5 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 Time
During the reading time you may write notes on the examination paper, but you may not commence writing in your answer booklet.

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

Answers
Start your answer to each question on a new page.

You are reminded to pay particular attention to your communication skills, and care must be taken regarding the format and literacy of the 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.

Answer Booklets
List on the cover of each answer booklet, in the space provided, the number of each question attempted. Additional instructions are shown on the front cover of each answer booklet.

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - APRIL 2019

Time Allowed: 3.5 hours, plus **20 minutes** to read the paper.
You are required to answer Question 1 and **any three** from Questions 2,3,4 and 5.

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

1. It is 1 April 2019 and you are Stacy Norris. You are a recently qualified CPA and have just successfully completed a three-month probation period within the Irish finance team of a multinational pharmaceutical Group, Pharma Life Plc (PHARMA). PHARMA is listed on the US stock exchange but has substantial operations in Ireland. You report directly to Denis Doherty, the CFO of Pharma Holdings Ireland Ltd. (PHIL), a company that has three Irish trading subsidiaries. Denis is fully aware that his tax knowledge is a little 'rusty' and so he called you to a meeting yesterday to discuss some tax queries in respect of PHARMA's Irish activities. Your notes from the meeting are outlined below:

Issue 1 - Sale of shares in UK company and reinvestment in group

In 2015, PHIL acquired a 30% shareholding in a UK start-up company, Trial Time Ltd. (TTL), whose trade involves running clinical trials in the UK and Ireland. This investment has been profitable and in July 2018, PHIL sold 27% of its shareholding in TTL, making a substantial gain. PHIL has decided to sell its remaining 3% shareholding and the sales negotiations are at an advanced stage with the completion of the sale expected to take place in May 2019. Based on the most recent figures, it is estimated that a gain of €1,400,000 will be made on the disposal of the shares. PHIL intends to lend the sales proceeds to one of its 100% trading subsidiaries, Pharma R&D Ltd. (PR&D). PR&D's main trading facilities are based in Cork but the company has long outgrown its current premises. An eight-acre site has been identified for purchase, which is currently on the market for €270,000. It is estimated that the build cost of the proposed facilities will be €1,100,000 and that 80% of the premises, when it is complete, will be used solely for research and development activities.

Issue 2 – Proposed UK operations

BREXIT planning has been high on Pharma's agenda for the last two years. The company set up a task group to identify strategies that should be undertaken to try to mitigate, as much as possible, any negative impact on the group trading operations and profits as a result of BREXIT. At a recent board meeting in Dublin, it was agreed that one of PHIL's trading subsidiaries, Pharma Sales Ireland Ltd. (PSIL), should set up an operation in the UK based in Northern Ireland (NI). The options were narrowed to either: establishing a UK branch of PSIL in NI; or incorporating a UK subsidiary company of PSIL. PSIL is an extremely profitable company which pays substantial corporation tax in Ireland on an annual basis. The time and effort associated with creating a manufacturing, sales and storage presence in the UK, either through a UK branch or subsidiary, are going to be extensive and it may take a number of years for the UK operation to be profitable. However, it is felt that it is imperative that a UK operation is commenced to try to ensure sustainability in terms of PHARMA being able to maintain its UK customer base.

The staffing of the UK operations will initially be facilitated by the secondment of two senior managers currently working in the PSIL. The individuals identified live very close to the NI border and so it is anticipated that they will commute daily to NI to carry out their employment duties and return home to Ireland every evening. The secondment is expected to last for two years.

Issue 3 - Irish commercial property sale

Denis has received an email query from his Dutch counterpart who works in PHARMA's main Dutch trading company. The query relates to the tax consequences associated with the disposal of a commercial office building in Limerick, by the Dutch company.

The building was identified as a good investment opportunity, at group level, in November 2008 and for cash flow reasons the acquisition was made through one of PHARMA's Dutch companies. The Dutch company registered for VAT in Ireland at the time of acquisition and claimed back the VAT charged on acquisition. It has charged VAT on the rent to tenants since it was let out, immediately after the purchase in 2008. Your Dutch colleagues have confirmed that all tax liabilities in Ireland associated with the rental profits have been paid to Irish Revenue.

Denis sent you on the email from the Dutch team which states that the building was purchased in 2008 for €850,000 plus VAT. Legal fees and stamp duty amounted to €65,700. An offer has been received for €1,450,000 (plus VAT, if any) from an Irish investment syndicate. It has been confirmed that the prospective purchaser is VAT registered and that a quote has been received from an Irish legal practice stating that legal costs associated with the disposal will be in the region of €18,450.

REQUIREMENT:

Draft a tax report for Denis Doherty, in which you consider and advise on:

(a) Pharma Holdings Ireland Ltd.'s (PHIL's) Irish tax exposure on the proposed disposal of shares in Trial Time Ltd. in May 2019.

(6 marks)

(b) The tax consequences for Pharma R&D Ltd. in respect of the proposed land purchase and also any tax relief available to the company in respect of the land purchase and the proposed building construction in Cork.

(7 marks)

(c) Whether PHIL should set up a branch or incorporate a subsidiary in the UK. Also, you should provide advice regarding the income tax position and any income tax relief available to employees who are seconded for a two-year period to work for the UK operations based in Northern Ireland.

(12 marks)

(d) The tax consequences associated with the disposal of the commercial property in Limerick by the Dutch company in the PHARMA group. Your answer should cover the VAT consequences of the sale, the taxation of any gain on the disposal and any issues regarding withholding on the proceeds.

(15 marks)

[Total: 40 marks]

2. You are a CPA Ireland student working in the internal accounting and finance department of Digital Eire Ltd. (DEL), an Irish company, which is ultimately owned by a US quoted company, Digi Inc. DEL is a trading company which manufactures sensors used by many major car manufacturers throughout the world. The chief operating officer in DEL heard that you have just passed your final exams and called you to partake in a conference call yesterday with the tax manager in Digi UK Ltd. DEL is a 100% subsidiary of Digi UK Ltd.

The conference call was primarily about Clement Doherty and his family. Clement is a senior engineer who has worked with Digi UK Ltd. for the past 26 years. He is married to Alex who is UK domiciled and they have one child, Charles, who is eight years old. Clement left Ireland over 30 years ago to study mechanical engineering in Birmingham University. After graduation, he commenced employment with Digi UK Ltd. Most of his relations, including his mother and father, still live in Ireland and Clement plans to return to Ireland, at some point in the future, to enjoy his retirement.

DEL is undertaking a major factory upgrade here in Ireland as well as expanding its product line. It has been decided, by the senior management team, that Clement's extensive experience is needed, on the ground, in DEL for a minimum period of three years.

He is due to arrive in Ireland on 1 May 2019. Clement will have earned the equivalent of €120,000 gross salary from Digi UK Ltd. in the first four months of 2019. He is extremely excited about the secondment to DEL as throughout the last ten years, due to his family and work commitments, he has only been able to spend a maximum of two weeks in Ireland per year. Clement is unlikely to return to the UK throughout 2019, as work in DEL is going to be hectic. During 2020 and 2021, he will spend a maximum of 21 days per year in the UK. Details of Clement's agreed package with DEL are outlined below:

- DEL has agreed to pay him €350,000 per annum in respect of his work for DEL in Ireland.
- As Charles will need to attend school in Ireland during Clement's secondment, DEL have agreed to pay Irish school fees of €4,500 per year.
- DEL will provide Clement and his family with one return flight per year to the UK.

Alex and Charles will follow Clement to Ireland on 31 August 2019, just in time for Charles to commence school in Ireland. Once he commences school in Ireland Alex realises that she will only spend limited time in the UK, possibly a maximum of 24 days per year, in 2020 and the subsequent years of Clement's secondment.

Clement and Alex intend to rent out their family home in the UK from 1 September 2019. They have no mortgage on the property and so they will generate rental profits from the outset. They have agreed that the UK rental income will stay in a joint UK bank account which will remain in the UK for the foreseeable future.

REQUIREMENT:

(a) Discuss Clement's tax residency position in the 2019 tax year. Recommend and justify his entitlement to claim income tax relief under the Special Assignee Relief Programme in respect of his secondment to Ireland.

(15 marks)

(b) Advise Clement and Alex of their respective exposure to Irish income tax on the UK rental income in 2019 and subsequent tax years.

(5 marks)

[Total: 20 marks]

3. Home Kitchens Ltd. (HOME) is a bespoke kitchen making trade which specialises in manufacturing high-end in-frame kitchens. Home is owned by Una and Phil Tracy and their four children: Erin; Kevin; Fiona and Jack. The shares in HOME are held as follows:

	No. of shares
Una (Director)	200
Phil (Director)	200
Erin (Director)	400
Kevin	400
Fiona	400
Jack	400
	2,000

HOME owns 90% of Unique Living Ltd. (LIVING). LIVING's trade involves the design, manufacturing and fitting of built-in wardrobes. The remaining 10% of LIVING is owned by a friend of the Tracy family, Justin Hegarty. Both companies operate a 31 December year end.

Paddy McLaughlin has worked full time for HOME since 2005 as a carpenter. In 2017, Paddy was refused a loan by his bank to build an extension to his house. When Una Tracy heard this, she arranged that HOME lend him the €18,000 he needed. HOME has been charging Paddy an interest rate of 0.5% on the loan and Paddy intends to pay the €18,000 back in one lump sum on 31 December 2019.

HOME owns a commercial premises (which is currently utilised as a showroom) in Cork city centre. When it acquired the premises in 2016, the company recovered 100% of the VAT charged on the purchase price of €124,850 (inclusive of VAT). HOME purchased the property using its own cash reserves and has no borrowings on the property. As the premises is located beside one of the busiest junctions in the city centre, where vehicles are often stopped by the traffic light system, and due to the large glass frontage of the premises, it has been an excellent advertising space for HOME. Twice per year, HOME has changed the kitchen on display in the showroom, and sales have increased as a result of those in the passing traffic seeing the quality of the bespoke designed kitchens on display. It is felt by the senior management team that LIVING's turnover could benefit from utilising the showroom to display some of its wardrobe designs. HOME therefore intends to lease the commercial building to LIVING for €3,000 per month. It has been agreed that LIVING, for the duration of the lease, will pay the commercial rates and insurance costs associated with the building.

HOME also currently owns a greenfield site which is adjacent to its manufacturing premises located on the outskirts of Cork City. This site was bought by HOME for €60,000 in 2011. LIVING has long outgrown its current workshop and it has been decided that it should purchase the site from HOME, at the site's current market value of €200,000, with the intention that it will construct its own factory on the site.

REQUIREMENT:

(a) Discuss the tax implications of the loan from Home Kitchens Ltd (HOME) to Paddy McLaughlin. (4 marks)

(b) Appraise and advise on the tax implications of the proposed letting of the commercial premises by HOME to Unique Living Ltd (LIVING). Your answer should include VAT and corporation tax advice.

(8 marks)

(c) Discuss the tax implications for HOME in respect of the proposed sale of the site to LIVING and outline any tax planning options available to HOME.

(8 marks)

[Total: 20 marks]

4. Sinead (50) and Andy (52) Logue are shareholders in Images Ireland Ltd. (IIL). IIL is a trading company involved in TV and film production and making corporate and web videos. Sinead owns 70% of the company and Andy owns the remaining 30%. This shareholding structure has remained unchanged since the company was incorporated in 2010 with an issued shares capital of €1,000.

Sinead and Andy have two children, Ryan (30) and Nathan (22). Ryan has lived and worked as a doctor in Australia for the last three years. Nathan is currently in his final year of a BA in Film Studies at Trinity College Dublin. Throughout his time in college, Nathan has worked in IIL on a part-time basis.

Sinead has always worked full-time for the company as the creative and technical director. Andy has been a director of the company since incorporation but he has been pursuing his own acting career, on a full time basis, for the last decade. However, as Andy has had a major health scare recently, he and Sinead have decided to retire early and do some travelling.

IIL has always traded from a building which is owned personally by Sinead. She receives rental income from IIL annually of €24,000 and had inherited the building from her father when he died in 2006. It had a market value of €125,000 at that time. The building is now worth €600,000 due to the massive regeneration that has happened in Dublin 1, where the building is located.

Neither Sinead nor Andy have made any gifts to their sons to date. Given their sons ages and their respective stage in life, Sinead and Andy have decided on the following:

- Andy will transfer his shares in IIL to Nathan immediately. His 30% shareholding has a market value of €450,000.

- Sinead will establish a trust with her two sisters acting as trustees. She intends to transfer her shareholding (valued at €1,050,000) to the trust. She will also transfer €50,000 cash to the trust and the commercial property which she owns personally and rents to IIL. In her letter of wishes to the trustees, she will stipulate that she would like Ryan to be the beneficiary of the commercial property and any cash sums in the trust, at some point in the future when he has settled down with a partner. She will also indicate, in her letter of wishes, that Nathan will be the ultimate beneficiary of the shares in IIL but only at a time when he has displayed the maturity to run the company properly. Sinead anticipates that IIL will continue to pay the rent of €24,000 to the trust on an annual basis for as long as the company is using the building as its commercial base.

REQUIREMENT:

(a) Advise of the tax implications for Sinead and the trust in respect of the transfer of assets to the trust.
(You may assume that there are no VAT consequences of the transfer of the commercial building in Dublin 1 to the trust).

(12 marks)

(b) Advise of the tax implications for Andy and Nathan in respect of the transfer of shares in IIL to Nathan.

(5 marks)

(c) Set out the tax issues arising for trustees of the trust, on an annual basis, while the assets remain the property of the trust.

(3 marks)

[Total: 20 Marks]

5. You have just been assigned a new client, Beautiful Bathrooms Ltd. (BBL). BBL and its major shareholder Patrick Gyle, have been clients of the practice since the 1990s. In order to bring yourself up to date with the case, you undertake a review of the tax files for BBL and for Patrick.

You see from the file that BBL has been funding an occupational pension for Patrick. Patrick is currently 64 years old. The most recent letter from the pension trustee company estimates that Patrick is entitled to a €150,000 lump sum payment from his pension pot when he retires.

Upon your review of the year ended 31 December 2018 accounts you see that there is a liability in the statement of financial position for €120,000. When you review the notes on the file you see that this is an amount owed to Patrick and it relates to money he loaned BBL in 2007, when the financial crisis was starting to take hold.

Also, on Patrick's tax file you see a file note regarding a recent call with Patrick which shows that Patrick has recently been in touch to confirm that he intends to retire fully from the company on 1 July 2019. Patrick has been taking a salary of €100,000 per annum from the company over the last five years. He has worked on a full-time basis for BBL, as the managing director, since the company was incorporated on 1 January 1991.

You also review the VAT files for BBL in an attempt to become a bit more familiar with the company's markets and customers. You note that the VAT returns are normally prepared and submitted by BBL's book-keeper. The VAT return for the quarter ended 31 March 2017 is the first one you look at, in depth, as you note that a VAT refund was obtained for this quarter. As you scan through the back up documents to the figures in the VAT return you notice a large invoice for €122,000 in respect of tiles supplied and delivered to private home in Northern Ireland. The invoice charges VAT at 0%. You cannot see any UK VAT number quoted on the invoice.

REQUIREMENT:

(a) Advise Patrick of the amount of tax-free cash he can extract from Beautiful Bathrooms Ltd. when he retires from the company on 1 July 2019.

(9 marks)

(b) Advise Patrick in respect of the error in the VAT return for the quarter ended 31 March 2017. *(Note - the VAT rate which applies to the supply of tiles is 23%)*

(11 marks)

[Total: 20 marks]

END OF PAPER

SUGGESTED SOLUTIONS

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - AUGUST 2018

SOLUTION 1

TAX REPORT

To: Denis Doherty
From: CPA
Date: April 2019
Re: Pharma Holdings Irld Ltd (PHIL) – various tax queries

Tax consequences of sale of shares in Trial Time Ltd (TTL)

It is possible for an Irish company, such as PHIL, to dispose of certain shareholdings in a company free of tax. This exemption is commonly referred to as the Participation Exemption/section 626B TCA 1997. The conditions that must be satisfied for the exemption to apply include:

1. The investor company, PHIL, must have a minimum shareholding in the investee company, TTL. PHIL is required to have a minimum holding of at least 5% in the investee company for a continuous period of at least 12 months in the two years prior to the disposal. Even though PHIL only owns 3% of the shares in TTL at the time of disposal, it should still fulfil the minimum holding requirement. Between May 2017 and July 2018, there was a 12 month continuous period where PHIL held a 30% shareholding in TTL.
2. TTL must carry on a trade – TTL is a trading company
3. At the time of the disposal TTL must be resident in an EU Member State or a country with which Ireland has a tax treaty – TTL a UK resident company.

5

A review of the statement of financial position of TTL should be carried out to ensure that the shares in TTL do not derive the greater part of their value from land/mineral/mining rights in Ireland.

1
6

Site purchase and building construction by Pharma R&D Ltd (PR&D)

PR&D will have a stamp duty liability on the purchase of the eight-acre site in Cork. Stamp duty will be charged at a rate of 6%. Therefore, stamp duty of €16,200 will be payable within 44 days after the date of execution of the purchase.

2

There will be no further tax relief associated with the purchase of the site.

1

However, a tax credit of 25% is available under section 766A TCA 1997 for expenditure on buildings which PR&D will use for R&D. This essentially means that the corporation tax for the company may be reduced by 25% of the expenditure (net of any grants) in the year in which the expenditure is incurred.

PR&D must be entitled to claim industrial buildings capital allowances on the building/structure to qualify for the credit. The 25% credit is given in addition to any capital allowances.

As PR&D intends to only use 80% of the building for R&D activities, then the €1,100,000 expenditure on the construction of the building apportioned accordingly. Therefore, only €880,000 (€1,100,000 x 80%) of the build cost can qualify for the 25% credit i.e. €220,000 of a corporation tax credit.

4
7

UK operations and Irish staff seconded to work in UK

If Pharma Sales Irld Ltd (PSIL) sets up a branch in the UK, then any trading loss incurred by the branch should be available for immediate offset against the taxable trading profits PSIL for the accounting period in question. Therefore, the branch losses would have the immediate impact of reducing the Irish corporation tax liability of PSIL.

3

If PSIL incorporates a UK subsidiary company and if the UK subsidiary makes a trading loss, such a loss cannot generally be surrendered to PSIL or other Irish group company. However, there is an exception to this where the UK loss is a 'trapped loss'. A trapped loss is a loss which cannot be used by the UK company to which it arose, or any other company in the UK, in the current, previous or future accounting period. It is therefore unlikely that the initial losses incurred in the UK subsidiary would be available in PSIL.

3

As it is anticipated that the UK operations will be loss making for the first number of years, it is advisable that a UK branch is first used. This structure will ensure maximum tax relief is available in PSIL for losses incurred in the NI branch. Thus the corporation tax liability of PSIL should be reduced.

2

With regard to the proposed secondment of some current Irish based employees to the NI operations, it should be noted such employees will be subject to UK PAYE on their employment salaries while they are seconded to the NI operations, as the duties of their employment will be carried out in the UK. As the employees will continue to reside in Ireland, they will remain Irish tax resident and so will be subject to Irish tax on their worldwide income.

2

Trans-border worker tax relief should be available to such employees to ensure that no further Irish tax is payable on their UK salaries. Trans-border relief applies where an Irish resident individual is employed in treaty country, such as the UK, for a continuous period of not less than 13 weeks. As the legislation refers to 'treaty countries', BREXIT should not impact the availability of the relief to Irish employees.

Other conditions of the relief include that the employment income must be taxable in the country where the duties are performed (i.e. the UK) and any UK PAYE due on the income must be paid and must not be eligible for repayment. The individual claiming the relief must spend at least one day a week in Ireland and work in the UK. A day is measured by reference to presence in Ireland at any time during the day. This provision should be acceptable for the seconded employees as they it is anticipated that they will return home daily.

2

12

Dutch company - Irish commercial property sale

The Dutch company will be subject to CGT on the disposal of the commercial property in Ireland. CGT will apply as the Dutch company is making a disposal of specified assets where such gains are not within the charge to corporation tax because the assets disposed of are not assets of an Irish trading branch.

Irish CGT will be due as follows:

Proceeds	1,450,000
Less cost of disposal	(18,450)
Net proceeds	1,431,550
Less cost	(850,000)
Less acquisition costs	(65,700)
Gain	515,850
CGT at 33%	170,231

5

With regard to the VAT position on the property, as the Dutch company claimed back the VAT on the acquisition of the property in November 2008, the property remains within its 20 year capital goods scheme (CGS) life. The property is no longer considered 'new' for VAT. However, to avoid a CGS adjustment (i.e. a clawback of the VAT originally reclaimed on acquisition), it is advisable that an agreement is reached with the purchaser to opt to tax the sale. Where the option to tax is exercised, the purchaser must account for VAT on the sale on the reverse charge basis. As the purchaser is a VAT registered investment company, it is likely that they will be agreeable to the option to tax.

5

As the Dutch company is disposing of Irish land and buildings for in excess of €500,000, the provisions of section 980 TCA 1997 need to be considered. Under this section, the purchaser of the Limerick commercial property will be obliged to withhold 15% of the total sale proceeds and pay it over to Revenue within 30 days of payment of the consideration for the asset. Interest will run and be charged on the purchaser if the tax is not paid by the due date.
Tax does not have to be withheld by the purchaser of the Limerick commercial building where the Dutch company is able to produce a tax clearance certificate, known as a CG50 clearance, from Revenue authorising the payments to be made in full.

A non-resident company will receive such a certificate only where the CGT is actually calculated, agreed and discharged the CGT liability arising to Revenue.

Where VAT arises on a transaction, the VAT-inclusive price should be used to determine if the consideration passing exceeds the appropriate limit and to calculate the amount which must be withheld or accounted for on the CG50 clearance application. As noted above, the reverse charge mechanism should apply in the case of this sale.

5

15

[Total: 40 Marks]

SOLUTION 2

(a) Clement's income tax position in Ireland

As Clement is arriving in Ireland on 1 May 2019, he will be resident in Ireland for 2019 as he will have spent more than 183 days in Ireland in 2019.

Clement should make a split year relief claim in 2019, his year of arrival in Ireland. Split year relief should be available to Clement, as he can show that he intends to be tax resident in Ireland for 2020, the tax year following his arrival in Ireland. The availability of split year relief will mean that Clement's €120,000 UK salary earned from 1 January 2019 to 30 April 2019, should not be subject to Irish income tax. Where split year relief is claimed, Clement will only be subject to Irish income tax on his salary earned in Ireland post 1 May 2019. Despite claiming split year treatment, Clement should be entitled to the full tax 2019 tax credits and standard rate cut off.

3

Income tax relief available to Clement

The availability of the Special Assignee Relief programme (SARP) should be considered for Clement. SARP will provide an element of income tax relief for Clement but no relief for USC and PRSI is available.

2

The SARP provides income tax relief on a proportion of the income earned by a relevant employee who, having worked with a relevant employer for a minimum period of 12 months, is assigned by the employer to work in Ireland.

A relevant employer means a company that is incorporated and tax resident in a country with which Ireland has a double taxation agreement or a tax information exchange agreement. As Digi UK Ltd is UK tax resident it qualifies as a relevant employer.

SARP can only apply to a relevant employee. A relevant employee is defined as an individual who:

- was a full time employee of a relevant employer and exercised the duties of his employment with that relevant employer outside Ireland for the whole of the 6 months immediately prior to arrival in Ireland – Clement fulfils this condition as he has worked for Digi UK Ltd for 26 years.
- Will perform the duties of his employment in Ireland for a relevant employer/ (associated company) – Clement will fulfil this condition as he will work for DEL

and

- was not tax resident in Ireland for the 5 tax years immediately preceding the tax year in which he first arrives in Ireland – Clement was not resident in Ireland in 2018 or previous tax years.

2

In addition, to be able to claim income tax relief under SARP, the relevant employee must for the tax year:

- be resident in Ireland for tax purposes – Clement will be resident in Ireland in 2019
- perform the duties of his/her employment with a relevant employer (or associated company) in Ireland for 12 months from the date of first arrival in Ireland – Clement will perform his duties for DEL in Ireland for a 3 year period

and

- have relevant income from his relevant employer which is not less than €75,000 excluding all bonuses, commissions or other similar payments, benefits, or share based remuneration. No upper threshold applies until 1 January 2020. Then a €1,000,000 threshold applies. – Clements income from DEL will be higher than €75,000 per year.

As Clement meets the above conditions, he should make a claim for SARP on his 2019 income tax return in Ireland. This claim will mean that he is entitled to have a specified amount of income from his relevant employment disregarded for income tax purposes.

2

As Clement arrived in Ireland part way through the 2019 tax year (on 1/5/19), the relevant limit of €75,000 will need to be time apportioned. That is, for 2019, the relevant amount is €50,000 (€75,000 x 8/12) from his relevant employer. Clement will receive €350,000 x 8/12 - €233,333 in 2019.

Clement can claim a refund of PAYE on the "specified amount" in 2019 which is determined as follows:

A = €233,333

B = €50,000

Specified amount = €55,000 i.e. (€233,333 – €50,000) × 30%

Clement will be entitled to an income tax repayment of €22,000 (€55,000 × 40%). 4

Clement will not be subject to income tax on the flight costs which DEL will cover for a single trip to the UK annually for him and his family. Nor will he be subject to income tax on the school fees paid by DEL in respect of Charles as they do not exceed €5,000 per annum per child. The payment/reimbursement of travel costs/tuition fees referred to at (a) and (b) above is not subject to USC or PRSI.

2

15

(b) As Clement is Irish tax resident and Irish domiciled in 2019, his UK rental profits will be subject to Irish tax. He will get double taxation credit relief for any UK tax paid on the UK rental profits.

As Alex is not resident in Ireland in 2019, she will not be subject to Irish income tax in 2019 on her UK rental profits.

As Alex is UK domiciled and as the UK rental income is not being remitted to Ireland, Alex will have no Irish tax exposure in respect of her share of the rental income, even when she becomes Irish tax resident in 2020.

5

[Total: 20 Marks]

SOLUTION 3

(a) Home and Living are close companies as HOME is controlled by five or fewer participators. Therefore, the close company anti avoidance provisions need to be considered. 1

The loan to Paddy will not be regarded as an annual payment under deduction of income tax as:

- he is an employee who works full-time for HOME; and
- he and his associates do not control more than 5% of HOME; and
- the aggregate of loans made to him and his spouse do not exceed €19,050. 1

An annual BIK under Schedule E will arise during the period the loan is outstanding as the interest rate on the loan (i.e. 0.5%) is less than the "preferential loan" rates of 4% for a qualifying home loan. 1

The tax exposure for Paddy in respect of the loan is that he will have an annual BIK of €630 (€18,000 x 3.5%). Extra PAYE, PRSI and USC will be due on the BIK. 1

4

(b) HOME letting premises to LIVING

The letting of property is a VAT exempt supply. However, as HOME recovered VAT on the acquisition of the commercial premises (the showroom) in 2016, the company should opt to tax the lease with LIVING. This option to tax will enable HOME to avoid an annual clawback of a proportion of the VAT recovered on acquisition of the property. 3

The VAT on the letting of the property will be at 23% but as LIVING carries on vatable activities, the company will be able to recover the VAT charged on the lease of the premises. 2

HOME, as the landlord, must either confirm in writing the intention to opt to tax the letting or have a VAT clause detailed in the lease agreement. 1

HOME will also be subject to 25% corporation tax in respect of any rental profit arising from the letting. It is likely that their will be a rental profit as HOME has no borrowings on the property nor will it be covering the insurance and commercial rates costs. 1

HOME will also need to consider its exposure to the close company surcharge on this estate income. 1

8

(c) HOME transfer of site to LIVING

Under normal rules HOME would be exposed to CGT on a gain of €140,000 on the disposal of the site. 1

However, as HOME has in excess of a 75% holding in LIVING, a CGT group is established. Therefore, for tax purposes, the transfer of the site will be deemed to be at no gain no loss for HOME. LIVING will take on HOME's original acquisition cost and date of acquisition of the site. 2

There will be a clawback of the CGT relief if within 10 years there is a break in the group relationship between HOME and LIVING. 1

Stamp duty at a rate of 6% would normally be payable on the transfer of a site i.e. €200,000 x 6% = €12,000. However, under s79 SDCA 1999, where two companies are involved in the transfer are 90% related, an exemption from stamp duty can be claimed. As HOME owns 90% of LIVING, this stamp duty exemption should be available. The stamp duty relief is subject to a clawback if the two companies cease to be associated within 2 years. 3

There will be no VAT implications of the transfer as the site has not been developed. 1

8

[Total: 20 Marks]

SOLUTION 4

(a) Tax implications for Sinead and the trust re the transfer of assets to the trust

Neither Sinead nor Andy have reached the age of 55. Therefore, retirement relief is not an option. 1

CGT for Sinead on the disposal of her shares and building

The availability of revised entrepreneur relief (ER) should be considered. Revised ER provides that a lower rate of CGT (10%) applies to an individual who disposes of chargeable business assets if that individual is a "relevant individual" or "qualifying person". 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 33% on the amount in excess of €1 million.

Chargeable business assets include ordinary shares in a qualifying company carrying on a qualifying business, provided that the individual selling the shares owned 5% or more of the ordinary share capital in the company being sold.

Shares disposed of by an individual in a company will not be considered as qualifying assets for the purpose of this relief if the individual is connected with the company immediately after the transfer. However, this restriction does not apply if it would be reasonable to consider that the disposal was made for bona fide commercial reasons and did not form part of a scheme or arrangement the main purpose, or one of the main purposes, of which was tax avoidance.

A "qualifying business" is a business that does not include the holding of shares/securities held as investments; the holding development land; or the development or letting of land.

The shares in Images Ireland Ltd (IIL) should be regarded as chargeable business assets. However, in order for ER to be available Sinead must also satisfy the following conditions for entrepreneur relief to apply:

1. Sinead owns not less than 5% of the ordinary shares in the qualifying company
2. Sinead must have been a director or employee of the qualifying company who is, or was, required to spend not less than 50% of her time in the service of the company in a managerial or technical capacity and has served in that capacity for a continuous period of three years in the five years immediately prior to the disposal of the chargeable business assets.
3. Sinead must have owned the shares for three of the last five years. 4

Sinead fulfils all these conditions and therefore she should be eligible for ER on the first €1,000,000 she receives for her shares. Any balance will be subject to CGT at 33%. ER will not be available on the commercial building and any gain on this will be subject to CGT at 33%.

CGT for Sinead
Shares

	€
Deemed proceeds	1,050,000
Less cost	(700)
Less CGT exemption	(1,270)
Gain	1,048,030
CGT at 10% on €1m	100,000
CGT at 33% on balance	15,850

Commercial building

	€	
Deemed proceeds	600,000	
Less cost	(125,000)	
Gain	475,000	
CGT at 33%	156,750	
Total CGT	272,600	4

Discretionary Trust Tax

Based on the level of discretion which Sinead is giving to the trustees, it would appear that they are going to be establishing a discretionary trust. However, discretionary trust tax will not be an issue while Sinead is alive.

2

CAT

When the trust is established, Ryan and Nathan will have no beneficial entitlement in possession to the trust assets. Therefore, no immediate charge to CAT will arise.

1

12

(b) CGT implications for Andy of transferring shares to Nathan

As Andy has worked full-time as an actor for the last decade he will not be able to fulfil the condition of having spent not less than 50% of his time in the service of IIL in a managerial or technical capacity and has served in that capacity for a continuous period of three years in the five years immediately prior to the disposal of the shares. He will therefore be subject to CGT at 33% on any gain on the shares.

CGT for Andy

	€	
Deemed proceeds	450,000	
Less cost	(300)	
Less CGT exemption	(1,270)	
Gain	448,430	
CGT at 33%	147,982	1

Stamp duty for Nathan

- Shares in IIL - €450,000 x 1% = €4,500 1

CAT for Nathan

Nathan should be entitled to business relief in respect of the gift of shares from his father.

The shares in IIL should qualify as relevant business assets because they are unquoted shares in a trading company and after taking into account the gift, Nathan will control more than 25% of the voting rights of the company in his own name.

The trading activity of IIL must continue to be carried on for at least six years to avoid a clawback of the relief.

2

Based on the availability of CAT business relief, Nathan's CAT liability will be:

	€	
Value of shares	450,000	
Less stamp duty	(4,500)	
	445,500	
Less BR	(400,950)	
	44,550	
Less annual gift exemption	(3,000)	
	41,550	
Less Group A threshold	(41,550)	
Taxable value	nil	1

5

(c) Income tax payable by trustees

For income tax purposes the trust would be liable to Irish income tax on all income. The trustees would therefore be liable to Irish income tax on any Irish deposit interest paid in respect of any cash held in bank accounts and on the rent for the commercial building. Income tax is payable at a rate of 20% and the trustees have no entitlement to personal credits and allowances.

1

A 20% surcharge will arise in relation to the Irish deposit interest and rental income to the extent that it is not distributed by the trustees within 18 months of the end of the tax year.

1

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

1

3

[Total: 20 Marks]

SOLUTION 5

(a) Loan creditor

The €120,000 which Patrick lent to Beautiful Bathrooms Ltd (BBL) in 2007 can be paid back to him, free of any tax consequences.

2

Pension lump sum

On Patrick's retirement, he will receive €150,000 tax free from his pension fund.

Termination payments

A tax-free termination payment can offer Patrick a tax-efficient method of extracting cash from BBL. Such tax-free payments can apply where a company director, like Patrick, is ceasing active involvement in the company and is retiring.

There are set limits up to which a termination payment is exempt from tax. Patrick will be entitled to receive, tax-free, the highest of the following options:

1. the "basic exemption" of €10,160 plus €765 for each complete year of service;
   €10,160 x €765 x 28 = €31,580

2. the "increased exemption" being the basic exemption + €10,000 - any tax-free payment received or receivable from a pension scheme.

   As Patrick is entitled in in excess of €41,580 as a lump sum from his pension scheme, the increased exemption amount is going to be reduced to nil.

3. the standard capital superannuation benefit (SCSB). The SCSB is computed by reference to the formula:

   $$\frac{E \times Y}{15} - L$$

   where, E = Average remuneration for the three years prior to termination of employment = €125,000

   Y = Number of complete years of service of the person with the company = 28

   L = Tax-free lump sum which the person is entitled to receive from the company pension scheme on retirement = €150,000

   €100,000 x 28/15 - €150,000 = €36,667. 6

   Therefore, the lifetime cap of €200,000 is not relevant for Patrick as he will receive a maximum of €186,667 (€150,000 + €36,667) tax-free.

1

9

(b) VAT should have been charged at a rate of 23% on the invoice which is for the supply of tiles to a private customer in Northern Ireland. VAT of €28,060 should have been charged by BBL and paid across to Revenue.

1

Self-correction of the VAT return is not possible as the time limit has passed. The self-correction for an error in the quarter ended 31 March 2017 VAT return would need to have been made by 23 September 2018. Self-correction would have resulted in the non-application of a penalty but interest for late payment would still apply.

2

As Revenue have not issued an audit notification, the option is open for BBL to make an unprompted qualifying disclosure in respect of the underpaid VAT. By making the unprompted disclosure BBL will be protected from prosecution, publication and will benefit from maximum penalty mitigation.

1

BBL should submit a notice of intention as soon as possible to protect the company's right to make an unprompted disclosure. A 60-day period should be requested to prepare the qualifying disclosure.

1

The unprompted qualifying disclosure should:

- Be in writing and it should be signed on behalf of BBL i.e. the taxpayer
- Include tax and interest owed and
- Include a full explanation and particulars of the chargeable amount must be included along with a statement of the amount of tax, due for each period in question

The penalty does not need to be paid on submission of the unprompted qualifying disclosure. 2

In terms of the penalty, Revenue are likely to treat the VAT error as being as a result of careless behaviour with significant consequences.

Given the fact that the shortfall in VAT paid for the quarter ended 31 March 2017 exceeds 15% of the VAT due for the VAT period, the default category will be 'with significant consequences' which leads to a 5% tax geared penalty will apply.

3

Interest will also apply to the underpaid VAT. The interest rate applicable is 0.0274% per day or part thereof. 1

11

[Total: 20 Marks]