

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - AUGUST 2018

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.

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**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. You are a recently qualified Certified Public Accountant working in a practice in Limerick. It is now 27 August 2018 and you have been asked to prepare a report by your manager outlining your tax advice in respect of the following case.

Frank and Adele Mallot have been clients of the practice for many years. They are both Irish tax resident. Not only are you familiar with their personal tax affairs but you also prepare the corporation tax compliance advice for a company in which Frank is a shareholder and director, Nu Adventures Ltd. (NUAL).

Frank and Adele are looking to buy a new house. In order to fund the purchase, they need to dispose of some assets.

Firstly, they are selling a dwelling house located in Limerick. They have a buyer prepared to pay €315,000 for the property and Frank and Adele's solicitor has provided them with a quote of €1,250 to compile and complete the legal paperwork attaching to the sale. An appointment has been made for 31 August 2018 to sign the sales contract. Frank and Adele purchased this, their first family home on 1 April 2006 for €160,000 plus legal fees of €1,500. After the birth of their third child, they moved out of this house and for the last seventeen months have been renting a larger house. Frank, a keen business man, has let their former home on Airbnb since they moved out. The only other time that they did not reside in their family home, during their period of ownership, was when Adele was seconded by her employer to work in Dublin. The secondment lasted six years, from January 2010 to 31 December 2015.

Frank also owns a warehouse which he purchased from a developer for €424,625 inclusive of VAT. Stamp duty and legal fees associated with the purchase were €10,500 plus VAT of €690. Frank claimed back all VAT he incurred on the purchase of the warehouse including the VAT on the legal fees. The developer had completed the warehouse in 2013 and it was on the market for almost two years before it was bought by Frank in September 2015. He uses the warehouse to store goods which are imported from China by NUAL. Frank is considering the sale of this warehouse for €650,000. However, he is unsure of the VAT implications of the sale of the warehouse and is adamant that he will only sell the it if he makes a clear profit of at least €275,000 over the acquisition costs of €385,500.

Frank's sister, Sinead, would like to buy a site off him for €50,000. This site was purchased for €108,000 including stamp duty and legal fees by Frank at the height of the property boom in April 2006.

The only other assets owned by Adele are shares which she purchased in 2006 in a friend's software development company. She purchased 2,000 of these at a price of £4.50 per share. In January 2018, a liquidator was appointed to the company and recent letters from the liquidator confirm that the company is insolvent. Adele knows that she is not going to be able to sell these shares but she has passed this information to the practice in case it is relevant for her tax calculations.

NUAL is an Irish trading company that was setup by Frank's father, Jack, in 2004. NUAL has traded successfully over the years and currently has distributable reserves in the region of €800,000. The shareholding structure of the company was reorganised in 2015 when Frank's father gifted 40% of his shareholding to Frank and 40% to his other son, Gerard. At this stage, Jack was in good health and wished to remain as a director and shareholder in the company. Jack has lived in Ireland all his life. He is now widowed with declining health. This has prompted him to decide to retire to Spain where he plans to enjoy its warmer climate in his retirement. Jack needs to obtain some money in respect of the disposal of his shares in NUAL in order to fund his retirement. His 20% shareholding has a market value of €500,000 and he has already been advised that the availability of retirement relief will mean that no capital gains tax will be payable by him on the disposal. Unfortunately, Frank and Gerard do not have the funds available personally to purchase their father's shares even though they are very anxious for the shares in NUAL to remain owned by family members only. Jack is not willing to sell his shares to a third party as he wants his sons to retain 100% of the ownership of NUAL.

REQUIREMENT:

Frank and Adele have requested a report which should include advice on the following:

- (a)** The capital gains tax liabilities for Frank and Adele assuming that all of the above disposals take place in 2018. You should clearly discuss any tax reliefs that are available in respect of their various disposals. (18 marks)
- (b)** The VAT treatment in respect of the sale of the warehouse. (5 marks)
- (c)** Why the purchaser of the warehouse may withhold some of the purchase moneys. Advise Frank also why this may be the case and what can be done to avoid this withholding tax on the sales proceeds. (5 marks)
- (d)** Advice regarding the possible tax planning available to enable Jack to receive €500,000 (tax free) for his shares in Nu Adventures Ltd. (12 marks)

[Total: 40 marks]

2. You are a recently qualified Certified Public Accountant working in a small practice in Wicklow. It is August 2018 and you have just met with Kate McCauley. Kate's mother died in June 2018 and last week Kate was informed that she is the sole beneficiary of her mother's estate. Detailed below are the notes from your meeting with Kate.

Kate is Irish tax resident. She has just come through an acrimonious divorce which has left her with €10,000 in savings, her car (worth €13,500) and her home worth €150,000 which has a mortgage attaching to it of €50,000. Kate has one daughter, Beatrice who is 28 years old. After her divorce, Kate has been forced to work 18 hours per week in a local café (i.e. 6 hours every Friday, Saturday and Sunday) to enable her to fund the mortgage repayments on her home.

Kate's mother's estate comprises:

1. The following assets are located on the family farm in Wexford. Kate's mother inherited the family farm from her father 15 months before she died. During her 15 months of ownership she farmed the land herself, with Kate's help.
 - Farmland with a current market value of €200,000.
 - Crops currently growing on the land with a market value of €45,000.
 - Farm buildings with a current market value of €40,000.
 - Tractor and other farm machinery with a market value of €38,000.
 - Farmhouse with a market value of €120,000.

Trade payables (money owed to Co-Op for farm supplies) for the farming trade were €15,000 at the date of death.

2. Cash of €50,000. Kate's mother has stated in her will that Kate will inherit this money on the condition that she uses it to invest in farm machinery within 24 months of her death.

Kate inherited €290,000 from her father on his death in 2002. This is the only previous gift/inheritance she has received.

Kate has explained that she will take on board any tax planning advice which will reduce her tax liability. She fully intends to continue her mother's legacy and farm the land herself. She hopes to leave her part-time job in the café soon as she is fully confident of being able to make a good living from the farmland. The local mart is taking place at the end of August and Kate would like advice as to whether she should spend her current savings of €10,000 on replenishing the cattle stock for the farm.

Kate's daughter, Beatrice, will turn 35 on 1 May 2025. Kate would like to gift her daughter a site on the farm (which she has just inherited from her mother) for her 35th birthday so that she can build her family home on it. There is one field on the farm which offers exquisite sea views which Beatrice has always loved. Kate is aware that some neighbouring farmers have sold one-acre sites for €100,000 in recent years.

REQUIREMENT:

- (a) Advise Kate in respect of her capital acquisitions tax liability as a result of her recent inheritance. This should include advice in respect of any relief(s) available and clearly outline what Kate needs to do to fulfil the conditions of the relief(s). (13 marks)
- (b) Advice on the tax implications, for both Kate and Beatrice, of Kate transferring a site to Beatrice in 2025. You should provide tax planning advice around the timing of this transfer as well as any reliefs that may be available in respect of the transfer.

You should assume that current tax rates and reliefs apply at the time of transfer. (7 marks)

[Total: 20 marks]

3. Daniel and Michael Shivers are brothers and they each own 50% of Shivers Quarries Ltd (SQL). SQL, in turn, owns 100% of the share capital of Shivers Waste Disposal Ltd (SWD). SQL was set up by the Shivers brothers in 2005. Currently SQL operates the quarrying trade and also a waste disposal trade. In recent years, the waste disposal activities of SQL have grown substantially and therefore, due to the risk associated with operating this type of trade, it has been decided that the waste disposal trade be transferred to SWD, the newly incorporated subsidiary of SQL. Both companies currently have a 31 July year-end. The waste disposal trade has always generated taxable profits and for the past number of years, it has resulted in corporation tax liabilities of between €75,000 and €98,000. It is proposed that the assets, creditors and the staff of the waste management trade, which is currently run in SQL, be transferred to SWD.

Michael approached the bank to request a loan so that SWD may pay SQL the market value for any assets transferred net of the liabilities of the trade. This bank funding has been approved and the funds will be in SWD's bank by close of business tomorrow.

Summarised below are the relevant market values, tax written down values for assets qualifying for capital allowances and also original acquisition details for the assets currently owned by SQL but which are to be transferred to SWD.

These are:

- Goodwill built up in the waste disposal trade. Over the last 10 years the waste disposal trade has grown annually and the goodwill is now valued at €450,000.
- Landfill sites and recycling buildings – Original cost of €250,000 in 2008. Current market value €350,000.
- Plant and machinery – various diggers, crushers, dumper trucks which have a market value of €220,000. Their collective original cost was €500,000 and their tax written down value at 31 July 2018 was €125,000.
- Current asset balances at 31 July 2018:
 - Trade receivables of €115,000
 - Inventory of €70,000

Michael informed you that the research and development (R&D) tax credit has been claimed by SQL in respect of R&D activities associated with the waste disposal trade. Scientists working for SQL have been developing new chemicals which enable the company to deal with hazardous waste in a more environmentally friendly way. As a result of the transfer of the waste disposal trade to SWD, Michael has decided to increase the level of R&D activity and has approached a top scientist, Henry McAuley, who currently works for the Environmental Protection Agency. Michael has offered Henry a €100,000 per annum salary and the intention is that Henry will work 90% of his time working on R&D projects with only 10% of his time being spent on compliance with the national waste regulators.

REQUIREMENT:

Draft a report to Daniel and Michael Shivers advising of the following:

- (a) The tax implications arising on the transfer of the business from Shivers Quarries Ltd (SQL) to Shivers Waste Disposal Ltd (SWD). Your answers should include an analysis of all taxes: corporation tax for SQL and SWD, stamp duty and VAT.

(14 marks)

- (b) The details of any R&D relief that can be offered to Henry McAuley as an incentive to encourage him to accept an employment contract with SWD.

(6 marks)

[Total: 20 marks]

4. You are Shaun Smyth and you have just returned from your summer holidays to find a note on your desk from the tax partner in the practice where you work. The note reads as follows:

Shaun,

Please review the following and draft relevant advice for us to review tomorrow. Yesterday (Monday, 27 Aug 2018), I met with Yvonne and Brian Donnelly of Donnelly Designs Ltd (DDL). As you know, DDL is a creative graphic design agency located in Drogheda, Co. Louth. The company was set up in 2016 with Brian owning 95% of the shares and Yvonne owning the remaining 5%. Yvonne and Brian moved to Drogheda in January 2016 after having lived in Belfast for the tax years 2008 to 2015 inclusive. Yvonne and Brian have twins and their children commenced national school in Drogheda in September 2016. Brian is a keen footballer and he plays for Drogheda Rangers. Yvonne is a talented golfer and she is currently the ladies captain at the Drogheda Golf Club.

During the meeting we discussed DDL's rapid growth. However, Brian was very clear that the company is experiencing cash flow difficulties. He went on to discuss the negative cash flow impact of DDL's Northern Ireland property investment in February 2016. He discussed how the rental income from the unit does not even cover the mortgage repayments. I was not aware that DDL had rented out property in Northern Ireland...were you?

Following yesterday's meeting, I checked the financial statements. Included, within non-current assets, is the unit which was purchased in a business park on the outskirts of Belfast. The mortgage attaching to the acquisition of this property is also shown in the financial statements. However, no rental income is recorded on the statement of profit or loss and other comprehensive income for the company and the corporation tax return for the year ended 31 December 2016 does not include any foreign rental income. During the meeting Brian confirmed that the unit is currently rented to tenants for £3,000 per month. After taking account of the interest attaching to the mortgage repayments and the insurance costs in 2016, a net annual rental profit of £20,000 (€23,500) arose. DDL paid UK tax at a rate of 20% in respect of this rental profit. Clearly, no tax has been paid in Ireland by DDL on these rental profits.

Yvonne does not take any salary or dividends from DDL. To help pay the mortgage on their home in Drogheda, Yvonne has continued to work for a web design company based in Newry, Northern Ireland. She earns an annual salary of £60,000 (€70,600). She stays in an apartment she owns personally in Newry, two nights per week and returns home to Drogheda all other nights. Yvonne has always considered herself to be UK resident and so has never filed a tax return in Ireland. Her UK salary is the only income she earns. Yvonne's employer has recently asked her to confirm where she is tax resident. Yvonne has assumed that she is UK tax resident because she works in Northern Ireland only.

As mentioned above I would like to meet with you tomorrow to review the advice that should be given to Yvonne and Brian.

Thanks in advance!

REQUIREMENT:

Draft relevant advice for:

- (a) Brian on how the Irish corporation tax liability should be updated for the year ended 31 December 2016 and also how he should deal with Irish Revenue in respect of the error that has been identified. (10 marks)
- (b) Yvonne on her tax residency position in 2017. You should provide advice on how her tax residency is decided where she is deemed both UK and Irish tax resident. (7 marks)
- (c) Yvonne on her exposure to Irish Tax, if any, in respect of her UK salary. (3 marks)

[Total: 20 Marks]

5. You are Carol Hurley and you have received the following email from a college friend, Tara Smyth. She has heard that you are now a qualified Certified Public Accountant and she would like to engage your services to help with some tax queries that she has.

To: c.smyth@CPAtaxadvice.ie
 From: Tara1974@gmail.com
 Re: Tax planning advice
 Date: 27 August 2018

Hi Carol

It was nice to see you at the recent college reunion.

I hope you can offer me some tax advice in respect of my mother's business. As you know my mum, Bernie, owns the local newsagent's shop in the village. She has recently won some money on the lotto and is finally seriously thinking about retiring. If she retires in October 2018, she will be 67 years old and is of the view that she can retire comfortably on her pension and her lotto win. Mum intends to transfer the shop business to my younger sister, Elaine.

The only previous gift/inheritance that Elaine has received was the €270,000 that our daddy left to her in 2000. Also, just to let you know, mum has never sold or transferred any assets before.

The most recent set of financial statements for the shop business are below:

Bernie's Shop			
Statement of Financial Position as at 30 June 2018			
		€	€
NON-CURRENT ASSETS			
Shop premises		200,000	
Fixtures & fittings		52,000	
Plant & equipment		<u>25,000</u>	
			277,000
CURRENT ASSETS			
Inventories		185,000	
Trade receivables		800	
Cash at bank		<u>75,000</u>	
			<u>260,800</u>
Total assets			537,800
OWNER'S CAPITAL			
Closing capital			500,000
CURRENT LIABILITIES			
Trade payables			<u>37,800</u>
Total owner's capital & liabilities			537,800

We have been told by a local valuer that the value of the shop premises in the financial statements is representative of the market value of the premises if it were to be sold on the open market. Mum inherited the building on the death of my grandmother in 2004 when it had a market value of €170,000. The plant & equipment and the fixtures & fittings are all valued at their net book value which is the same as their tax written down value. Earlier this month, we had a specialist look at the accounts of the shop business and they advised that the shop business would have a market value of around €650,000 taking into consideration €150,000 worth of goodwill that has built up over the years.

On a separate note, I have received a final settlement sum of €200,000 from my recent divorce. I would like some advice in respect of the income tax relief that I can obtain for investing this money in my neighbour's trading engineering company. He called to my house last night to show me his company's expansion plans, particularly in respect of the increase in the number of employees over the next few years. I pay far too much tax on my annual salary of €400,000.

Please give me a call when you have had time to consider the above.

Tara

REQUIREMENT:

Draft relevant advice for Tara on:

- (a) The capital gains tax consequences for Bernie if she transfers the newsagent's shop business to Elaine in October 2018. (6 marks)
- (b) The capital acquisitions tax and stamp duty implications for Elaine in respect of the gift of the newsagent's shop business from Bernie. (8 marks)
- (c) The income tax relief which should be available to her in respect of any shares she purchases in her neighbour's trading engineering company. (6 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: Frank and Adele Mallot
FROM: CPA
RE: Various tax queries
DATE: August 2018

(a) CGT ADVICE ON THE SALE OF VARIOUS ASSETS IN 2018

Principle private residence (PPR) Relief

The house in Limerick should qualify for PPR relief. However, the property was not utilised as their PPR throughout all the period of ownership. However, there is a general rule whereby **the last 12 months of ownership are included in the period of occupation as long as the owner was in occupation** at some time during the period of ownership. Therefore, even though they have not lived in the house as their PPR for 17 months, only 5 months will be treated as non-occupation for PPR relief.

2

In addition, the following deemed period of occupation is relevant in respect of the time that Adele was seconded to work in Dublin:

- any period not exceeding four years, throughout which, because of the individual's place of work or a condition of employment, the individual had to reside away from his/her home, most likely elsewhere in Ireland.

2

Therefore, the CGT position on the sale of the family home is as follows:

Bought	01/04/2006	Cost	160,000
Sold	31/08/2018	Proceeds	315,000

total period of ownership 149 months

1

Months not treated as PPR

secondment in ROI - 4 years covered so non-PPR for	24 months
Last 17 months rented - 1 year covered by final 12 months rule so not PPR for	<u>5 months</u>
	29 months

1

Total PPR is 149 - 29 = 120

Proceeds	315,000
Less cost of acq	<u>(1,250)</u>
	313,750
Less cost	(160,000)
Less costs of acquisition	<u>(1,500)</u>
Gain	152,250
Less PPR	<u>(122,617)</u>
Gain after PPR	29,633
50% each	14,816

1

1

1

1

Negligible value claim

Where a person owns a capital asset, such as the share that Adele owns, the value of which is now negligible a claim can be made to Revenue for relief for the unrealised loss. This claim can be made even though Adele has not disposed of the shares. As a liquidator has been appointed and as the company is insolvent, Revenue should allow relief for the loss of €9,000 (2,000 x €4.50).

3

Restricted loss

Frank is disposing of a site to his sister for €50,000 and he is generating a loss on this disposal of €58,000. As this disposal is to a connected party of Frank, the loss incurred is a clogged loss.

This loss will only be available for offset against future gains which are generated on sales to his sister Sinead.

2

CGT for Frank on the disposal of the warehouse

Proceeds		650,000	
Less cost	375,000		
Less costs of acquisition	<u>10,500</u>		
		(385,500)	
Gain		<u>264,500</u>	1

CGT computations for Frank and Adele

	Frank €	Adele €	
Gain on house	14,816	14,816	
Gain on warehouse	264,500		
Less negligible value claim		(9,000)	
Less annual exemption	<u>(1,270)</u>	<u>(1,270)</u>	
Gain subject to CGT	278,046	4,546	1
CGT at 33%	91,755	1,500	1

18

(b) VAT ADVICE ON THE SALE OF THE WAREHOUSE

Frank paid VAT on the acquisition of the warehouse in September 2015 as he bought it from a developer and the developer was required to charge VAT. This was the first supply of the property.

1

Frank has occupied the warehouse since it was acquired in September 2015. By August 2018, the warehouse has been occupied for more than 24 months.

1

If Frank decides to sell the warehouse, it will be no longer considered new. The sale is exempt from VAT.

1

However, it will be desirable for Frank and the purchaser to jointly opt to tax the sale to ensure that Frank does not suffer any capital goods scheme adjustment.

1

Where the joint option to tax is used, details should be included in the sales contract. The purchaser will then self-account for the VAT on the reverse charge basis.

1

5

(c) ADVICE REGARDING WITHHOLDING TAX ON SALES PROCEEDS

Where the consideration for sale of non-residential property exceeds €500,000, the full proceeds are chargeable at 15%.

1

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 the sales proceeds for the disposal of the warehouse are €650,000 exclusive of VAT, the withholding tax may apply.

1

In order to avoid withholding tax, Frank will need to be able to provide the purchaser with a tax clearance certificate, known as a CG50 clearance.

1

An Irish resident taxpayer, such as Frank, making a disposal is entitled to such a clearance certificate as of right, provided he/she applies for it in time, i.e. before the transfer/conveyance of the asset in exchange for consideration, and provided Revenue is satisfied with all of the information contained in the CG50 clearance application form.

1

A CG50 clearance application should therefore be submitted to Revenue prior to the transfer. The clearance certificate can then be provided to the purchaser's solicitor.

1

5

(d) SHARE BUYBACK

As Jack has been advised that he can qualify for retirement relief on any proceeds received for his shares, it is paramount from a tax point of view that any money he receives from NUAL is treated as a capital receipt and not income. Therefore, advice regarding salary and dividend extraction is not a serious consideration in this case.

1

A company, such as NUAL, can buy back its shares and the vendor of the shares can obtain capital/CGT treatment in respect of the money they receive for their shares.

1

Certain conditions must be met for CGT treatment to apply. To qualify for CGT treatment:

- The company must be trading – NUAL is a trading company.
- The share buyback must be for the benefit of the company's trade. Revenue have provided examples of the "trade benefit test" which includes scenarios where there is a disagreement between shareholders over the management of the company which could adversely impact on the business and it is necessary to remove the dissenting shareholder; or to ensure that the shares are not sold to a third party who might not be acceptable to the other shareholders. – As Jack, the vendor, and the existing shareholders in NUAL do not want Jack's shares to be bought by anyone else as they want the company to remain in the family, the trade benefit test is likely to be fulfilled.
- The vendor must be resident and ordinarily resident in Ireland in the year of the share disposal – Jack should ensure that he retains his Irish tax residence in the year of disposal of his shares.
- The vendor must have owned the shares for a period of five years up to the date of disposal – Jack has owned the shares since 2004.
- Following the share buy-back, the vendor's shareholding in the company must have been reduced by at least 25% - Jack will not retain any shares and therefore this condition is satisfied.
- Following the share buy-back, the vendor must not be connected with the company, i.e. not own more than 30% of issued share capital or voting power or assets available on a winding up of the company – this condition is satisfied as Jack will not retain any shares after the disposal ; and
- the share buy-back must not be part of any scheme whose purpose is to enable the owner of the shares to participate in the profits of the company without receiving a dividend – Jack is looking to retire and remove himself completely from the company.

7

NUAL also has sufficient reserves to fund the share buyback.

1

Therefore, all conditions are satisfied to allow Jack to receive €500,000 from NUAL in respect of his shares which are bought back by the company and for the funds to be treated as a capital receipt in the hands of Jack.

1

The shares which are bought back will be cancelled by the company. Hence, Frank and Gerard will each be a 50% shareholder in NUAL after the buyback.

1

12

SOLUTION 2

(a) CAT advice for Kate

Kate is inheriting a number of assets. However, as a substantial part of her inheritance is agricultural property, consideration needs to be given to decide if agricultural relief (AR) is available.

AR will amount to a reduction of 90% in respect of the value attributable to relevant agricultural property taken by the beneficiary, Kate.

However, AR can only apply where the beneficiary qualifies as a 'farmer'. Therefore, Kate must be a farmer as defined for AR to apply. Kate will only qualify as a farmer if on the valuation date agricultural property comprises 80% of her total property after taking the inheritance.

With regard to the €50,000 which Kate's mother has left to her, subject to her investing this money in farm machinery within 24 months, it should be noted that AR is available where an individual takes a gift or an inheritance, subject to a condition that the gift or the inheritance be invested in agricultural property within two years, and the investment is actually made within the two-year period. Where the investment happens within the required period, the gift or inheritance is deemed to be of agricultural property. It is therefore advisable that Kate undertakes this investment so that the €50,000 cash inherited can be treated as 'agricultural property'.

2

However, this alone will not be enough for Kate to be deemed a 'farmer'. In respect of the €10,000 savings she currently holds, our advice would be that Kate should use this money to invest in livestock before the valuation date. By doing this, she will change the cash, which is non-agricultural property, to livestock, which is agricultural property. Hence, Kate will qualify as a farmer.

2

As you can see from the calculations below, 82% of Kate's assets after the inheritance will be agricultural assets.

Farmer Test for Agricultural Relief

	Total value	Agricultural assets	Non-agricultural assets
Cash with condition	50,000	50,000	
Farmhouse	120,000	120,000	
Farm buildings	40,000	40,000	
Farm land	200,000	200,000	
Crops	45,000	45,000	
Farming machinery	38,000	38,000	
Kate's own house (net of mortgage)	100,000		100,000
Car	13,500		13,500
Cash at bank	10,000	10,000	
	<u>616,500</u>	<u>503,000</u>	<u>113,500</u>

2

Farmer test 82% 81.59%

1

The "active farmer" test, must be fulfilled for AR to apply. This test requires that the recipient must either:

1. farm the agricultural property for a period of not less than six years commencing from the valuation date; or
2. lease the agricultural property for a period of not less than six years commencing from the valuation date.

In addition, the beneficiary (or the lessee, where relevant) must either:

- have an agricultural qualification, or achieve such a qualification within four years of the date of the gift/inheritance; or
- farm the agricultural property for not less than 50% of their "normal working time".

"Normal working time" (including on-farm and off-farm working time) is considered by Revenue to approximate 40 hours per week. Therefore farmers will qualify for the relief provided they spend a minimum of 20 hours working per week, averaged over a year, on the farm.

Therefore, Kate would need to spend a minimum of 20 hours working per week, averaged over a year, on the farm. It is likely that Kate will do this as she has clearly indicated that she intends to give up her part-time job and work full-time on the farm.

3

CAT liability where AR claimed	€	
Market value of assets transferring	493,000	
Less AR	(443,700)	
Agricultural value	49,300	
Less liability to Co-op	(1,500)	
Incumbrance free value	47,800	
Less group A remaining	(20,000)	i.e. 310k - 290k
Amount subject of CAT	27,800	
CAT at 33%	9,174	

3

13

(b) Transfer of site to Beatrice

Kate will need to be conscious of the 6 year clawback period that exists for AR. If development land, which has qualified for AR, is disposed of in the period commencing 6 years after the date of the gift/inheritance and ending 10 years after that date, the AR granted will be clawed back in relation to the development value of the land at the original date of the gift or inheritance. Therefore, as it is likely that there is development value (over the agricultural value) in respect of the site which Kate intends to transfer to Beatrice, it will be 10 years from the date of death of Kate's mother (i.e. January 2028) before she can transfer the site to her without incurring a clawback of AR.

2

In addition, capital gains tax (CGT) could arise for Kate on any uplift in the value of the land from the date she inherited it (i.e. the valuation date) and the date of transfer to Beatrice. CGT will arise even where no proceeds are being received. However, under s603A TCA 1997, a CGT relief exists where a parent transfers a site to a child to enable that child to build a principal private residence. The conditions of the relief include:

1. The value of the land must not exceed €500,000;
2. The size of the site must not exceed 1 acre, exclusive of the area on which the house is to be built and
3. The purpose for which the land is transferred to the child must be to enable the child to construct a dwelling on the land which will be occupied by the child as their principal private residence.

The legislation provides that a clawback of the relief will occur where the child does not construct a residence on the land and occupy it as their principal private residence for a period of 3 years.

2

Stamp duty and CAT need to be considered for Beatrice. Stamp duty at a rate of 2% on the market value of the site.

1

Beatrice will have a Group A threshold available to her in respect of any gifts/inheritances. This threshold is currently €310,000. The annual gift exemption will also be available of €3,000.

2

7

SOLUTION 3

(a) The tax implications arising on the transfer of the waste disposal business from SQL to SWD.

Chargeable gains for corporation tax purposes will arise in SQL as it is treated as disposing of assets.

- No chargeable gains arises on the trade receivable or the inventory transferred as this are not chargeable assets.
- As the plant and machinery are being transferred for less than cost no chargeable gain will arise in respect of these assets.
- However, as SQL is disposing of chargeable assets such as the land & buildings and goodwill a chargeable gain may arise. As the land & buildings and the goodwill are being transferred to another group company (i.e. a 100% subsidiary) section 617 TCA 1997 provides that group relief should apply.
- As a result, SQL will be deemed to have transferred the land and buildings and the goodwill at no gain/no loss.
- The purchaser, SWD, will be treated as having purchased the land & buildings and the goodwill at its original costs (land and buildings €250,000 and goodwill €0).
- It should be noted that a 10 year clawback period exists which means that SQL and SWD need to remain part of the same group for 10 years.

6

Stamp duty

Stamp duty at a rate of 2% will apply to the transfer of the land and buildings and the goodwill. No stamp duty will apply to the transfer of plant & machinery as these can pass by delivery.

However, section 79 SDCA 1999 provides for associated companies relief. This relief should apply to the transfer of the land and buildings and the goodwill as both companies are 100% associated.

SQL and SWD should remain associated for at least 2 years after the disposal to ensure that no clawback of the relief is incurred.

3

Corporation tax

As SQL is transferring its waste disposal business, it will be deemed to have ceased this trade but will continue to operate the quarrying trade. The cessation of the waste disposal trade can have balancing allowance/charge implications for the assets associated with this trade.

Section 400 TCA 1997 provides relief where a trade carried on by one company is transferred to another company as a going concern. The relief enables the transfer of capital allowances from one company to another where a trading company ceases to carry on a trade and following the cessation, another company carries on that 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 SQL owns 100% of SWD, the ownership requirement is met. SWD will be treated as stepping into the shoes of SQL for the purpose of capital allowances. SQL will therefore be treated as disposing of assets at their tax written down value and hence will not incur any balancing allowances or charges.

3

VAT

There are no VAT consequences in respect of the transfer of the waste disposal trade as section 20(2)(c) VATA 2010 'Transfer of Business Relief' provides that VAT is not chargeable on a transfer if the following conditions are satisfied:

1. The purchaser is a VAT registered person (SWD will be VAT registered) and
2. Is entitled to 100% VAT recovery (a waste disposal business should be entitled to 100% VAT recovery) and
3. The transfer must constitute an undertaking or part of an undertaking capable of being operated on an independent basis. (The waste disposal trade will constitute an undertaking)

Therefore, SQL will not be entitled to charge VAT on the transfer of the business to SWD.

2

14

(b) A company such as SWD may surrender all or part of the R&D tax credit to “key employees” who have been or are central to the R&D activity. A “key employee” is defined in S472D (TCA 1997) as an individual who:

- Is not, or has not been, a director of the company and is not connected to a director of the company – Henry is not going to be a director;
- Does not have, or never has had, a material interest in the company or is not connected with a person who has a material interest (5%) in the company- all shares in SWD are owned by SQL. SQL is in turn owned by the Shivers brothers;
- Performs at least 50% of their activities “in the conception or creation of new knowledge, products, processes, methods or systems” – Henry will spend 90% of his time on R&D activities; and
- Has 50% or more of their emoluments which qualify for the R&D credit – 90% of Henry’s emoluments will qualify for R&D credit.

4

The amount of R&D credit which can be surrendered is limited to the amount of corporation tax due by the company prior to taking the R&D credit into consideration. As the waste disposal trade has resulted in corporation tax liabilities in excess of €75,000 in recent years, it is likely that it will have similar levels of corporation tax due after the trade transfer.

The effective rate of income tax payable by the individual employee cannot be reduced below 23%. Henry will be receiving a salary of €100,000 and he will therefore benefit from income tax relief.

2

6

SOLUTION 4

- (a) Where an Irish company receives rental income, this will be subject to Irish corporation tax at 25%. However, as DDL has a UK property which it is deriving rental income from, the double tax treaty between Ireland and the UK needs to be consulted.

1

The Ireland/UK double tax treaty provides that rents from property situated in the UK are taxable in the UK, but with a right to offset the tax payable against the Irish tax due on the same income. Hence DDL should be entitled to credit relief in Ireland for the UK tax paid on the rental income.

2

The effective rate of tax in the UK is 20% on DDL's rental income. This is lower than the Irish corporation tax due on the rental income i.e. at 25%. The additional tax due by DDL in respect of the rental income is:

Additional rental income	€23,500	
Irish corporation tax	€5,875	(€23,500 x 25%)
Less double tax relief:		
Restricted to the lower of		
1. Irish CT od €5,875 or		
2. UK tax €23,500 x 20% =	(€4,700)	
Additional corporation tax due	€1,175	

3

The filing deadline for the corporation tax return for the year ended 31 December 2016 is 21/23 September 2017. As it is still 12 months from the due date of the filing of the corporation tax return for the period ended 31 December 2016, the company is still within the self-correction window. The self-correction window will close on 21/23 September 2018.

2

Therefore, the corporation tax return for the period ended 31 December 2016 may be self-corrected without penalty as long as:

- Revenue is notified in writing of the adjustments to be made, and the circumstances under which the errors arose before 21/23 September 2018.

1

- A computation of the correct tax and statutory interest payable is provided, along with payment in settlement.

1

10

- (b) Yvonne is Irish tax resident in 2017. She is Irish tax resident as she has resided in Ireland for more than 183 days in the tax year.

1

Yvonne could be deemed to be UK tax resident also, given the fact that she works in Northern Ireland and also, she stays in Northern Ireland on average, two nights per working week.

The Ireland/UK tax treaty states that it applies to persons who are resident in either or both of Ireland or the UK. The treaty does not allow for the concept of dual residence.

1

The treaty does contain a tie-breaker clause for individuals. The tie-breaker clause is carried out by establishing the answer to a series of questions as follows:

- Where is the individual's permanent home or centre of vital interests?
- Where does the individual have his/her habitual abode?
- Is the individual a national of either state?
- If none of these questions gives an indication of the individual's tax residence, then residency is to be determined by mutual agreement between the Revenue authorities.

2

If the tie breaker clause is applied to the facts of Yvonne's case, then it appears that:

- She has a permanent home available to her in both Northern Ireland (the apartment in Newry) and Ireland (home in Navan).
- However, it is clear that her centre of vital interests is in Ireland as her children attend school in Ireland and she is involved with various local clubs and societies located in Ireland.

2

Yvonne would be deemed to be Irish tax resident under the Ireland/UK tax treaty.

1

7

(c) Cross-border tax relief should be available to Yvonne.

1

Yvonne is Irish tax resident and she is employed in the UK, a double tax treaty country.

Yvonne has been employed in the UK for not less than 13 weeks in the tax year, her employment duties are performed in the UK and she pays UK tax on her salary. Yvonne also spends at least one day per week in Ireland.

1

As Yvonne has no other income in Ireland, cross-border tax relief should mean that she has no additional tax due in Ireland in respect of her UK employment salary.

1

3

SOLUTION 5

(a) Capital gains tax consequences for Bernie of the transfers

For CGT purposes, Bernie will be treated as disposing of her shop business even if she is receiving no proceeds from Elaine. This is because section 547 TCA 1997 states that where a person acquires an asset from a connected party or not for a bargain at arm's length, then market value must be substituted in place of consideration given.

1

Section 599 TCA 1997 provides for retirement relief from CGT on the disposal or transfer of qualifying business assets to a child of the disposer, such as Elaine, without any limit on the value of assets transferring where the disposer is aged less than 66. Where the disposer is aged 66 or over, an upper limit of €3,000,000 is imposed. As Bernie is 68, the €3,000,000 limit applies.

1

From retirement relief to apply, the disposal must be of qualifying assets, which are owned by the disposer for the qualifying period of 10 years.

Qualifying assets comprise actual assets used in a trade including:

- Land & buildings owned for at least 10 years and used for the purposes of the trade continuously throughout the 10 year period – Bernie owns the shop premises since 2004. Therefore, this condition is satisfied.
- Goodwill associated with the trade – as the trade is ongoing for in excess of 10 years, the €150,000 goodwill should qualify.
- Plant & machinery used for the purposes of the trade. Plant & machinery do not have to be owned for a 10 year period prior to disposal as they very rarely have a useful life up to 10 years. As plant & machinery are wasting assets, it is very rare for a capital gain to arise on their disposal. Similarly, the fixtures & fittings should not give rise to a capital gain either.

2

Assets such as trade receivables or inventory are not chargeable business assets as they do not give rise to a chargeable gain on disposal.

1

The total deemed proceeds in respect of qualifying assets are:

Market value of qualifying assets transferring

	€
Premises	200,000
Plant & machinery	52,000
Fixtures & fittings	25,000
Goodwill	150,000
	<u>427,000</u>

As the above amount is below €3,000,000 RR will fully cover the transfer and no CGT liability should arise for Bernie.

1

6

(b) Tax implications for Elaine

Stamp duty

Stamp duty of 2% of the market value of the shop premises and the goodwill will arise for Elaine.

The plant & machinery and fixtures & fittings can transfer by delivery and therefore no stamp duty should arise.

The trade receivables are very small but it is suggested that these are collected by Bernie before the transfer to avoid any stamp duty being payable on them.

Total stamp duty will be €7,000 (i.e. (€150,000 + €200,000) x 2%) and is due within 30 days of the transfer by way of an e-stamping return to Revenue. By concession, Revenue allow an additional 14 days to pay when a return is filed within 30 days. The amount of stamp duty paid can be deducted for CAT purposes when applying the reliefs.

2

CAT

Business Relief (BR) will amount to a reduction of 90% in respect of the value attributable to relevant business property taken by the beneficiary, Elaine. Only relevant business property will qualify for the relief. "Relevant business property" includes an interest in a business carried on by a sole trader. Bernie has been operating the sole trade business since 2004 and she intends to transfer the entire business to Elaine and not just individual assets.

To qualify for BR the relevant business property must have been owned for a continuous period of 5 years prior to the date of the gift by Bernie. This condition is satisfied.

1

In respect of a sole trade business, such as Bernie's shop trade, the value of the business for the purposes of BR is the net value. The net value is arrived at by reducing the market value of the assets used in the business by the market value of any liabilities incurred for the purposes of the business.

Net value of the business for business relief purposes

	€	€
Goodwill	150,000	
Premises	200,000	
Fixtures & fittings	52,000	
Plant & equipment	25,000	
Inventories	185,000	
Trade receivables	800	
Cash at bank	<u>75,000</u>	
		<u>687,800</u>
Total assets		<u>687,800</u>
Trade payables		<u>(37,800)</u>
Net value of shop business		650,000

1

Elaine's CAT liability

Property qualifying for BR	650,000	
Less stamp duty	<u>(7,000)</u>	1
	643,000	
Less BR	<u>(578,700)</u>	1
	64,300	
Less group A remaining	<u>(40,000)</u>	1
Less SGE	<u>(3,000)</u>	1
	21,300	
CAT at 33%	7,029	

8

(c) Tara can obtain income tax relief in the form of the Employment and Investment Incentive Scheme (EIIIS) for share investments in trading companies. Below are some of the main points in respect of EIIIS:

- Tara can obtain income tax relief by way of deduction against her total income.
- Relief is granted at the Tara's marginal rate of tax – 40% given the level of her earnings.
- Tara must not be connected with the company in the two years prior to the purchase of shares and for a period of three years following acquisition of the shares.
- Tara must purchase eligible shares i.e. new ordinary shares
- The relief will be withdrawn if the shares are disposed of within four years of issue.
- As the engineering company is intending to use the funds to contribute directly to the maintenance or creation of employment in the company, the EIIIS should be available.
- Relief is available in a full tax year subject to a maximum amount of €150,000. As Tara is intending to invest €200,000, the €50,000 excess will be carried forward.
- Initially, Tara can only claim relief at 30/40 times the amount invested.
- The remaining 10/40 relief (i.e. relief at 10%) will be available where it has been proven that employment levels have increased by the company at the end of the holding period of three years.

6 marks