ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - AUGUST 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

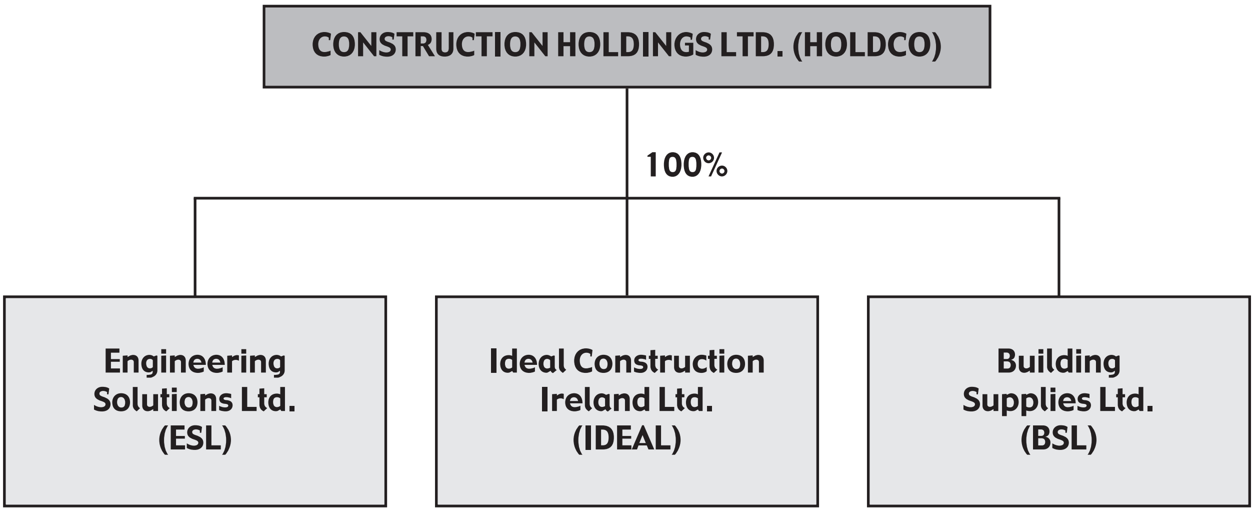
PROFESSIONAL 2 EXAMINATION - AUGUST 2019

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 12 August 2019. You are a recently qualified CPA working in a medium-sized practice in Limerick. Yesterday, you and one of the partners in the practice met with Brian Quigley (51) and Matthew Gallagher (50).

Brian and Matthew first met in 2005 on a construction course. They became friends and decided to start a construction business together. In 2007, they incorporated Ideal Construction Ireland Ltd. (IDEAL), with Brian owning 300 €1 ordinary shares and Matthew owning 700 €1 ordinary shares. In 2012, a holding company structure was put in place. As a result, Brian now owns 30% of Construction Holdings Ltd. (HOLDCO), with Matthew owning the remaining 70%. At the time of the reorganisation, all relevant tax reliefs were claimed, and no tax implications arose for Brian and Matthew. The current group structure is shown below:



Since 2012, HOLDCO owns three trading subsidiaries: Engineering Solutions Ltd. (ESL); IDEAL and Buildings Supplies Ltd. (BSL). None of HOLDCO's trading subsidiaries owns any investment assets. Brian and Matthew are directors of all companies in the group, and they each have spent 100% of their working time managing the trades of the group companies since 2012. They each draw an annual salary of €50,000 from IDEAL, the most profitable company in the group. IDEAL has carried on a construction trade since incorporation.

ESL is an engineering company which manufactures bespoke steel products. The company mainly produces supporting structures needed in the construction and renovation of buildings. Traditionally, the company has sold its products directly to IDEAL's customers, other private individuals, and construction companies operating in Ireland. ESL's reputation for quality design has gained many customers and the company has recently received orders to sell some bespoke steel supporting beams to a Dubai hotel chain. This will be used in the construction of a new hotel in the desert, and by a VAT registered French construction company, which is carrying out repair work to Notre-Dame Cathedral in Paris. The Dubai order is for €120,000, while the French order is for €90,000. Both these prices are exclusive of VAT.

BSL operates a trade which involves a busy retail outlet which sells building materials. In 2015, Matthew urgently needed to raise some cash personally and so he borrowed €50,000 from BSL. He has suffered the income tax consequences of this loan each year since 2015, and BSL has also paid the required amount to Revenue in respect of the loan. In order to try to simplify his affairs, it was agreed that BSL write off the loan on 1 January 2019.

Brian has one son, Des, who is 35 years old. Des graduated from university in 2017 with an MBA. He has been working for ESL for just over a year and has become a key employee in the company, as well as offering strategic guidance regarding the direction of the group. Brian is very pleased with Des' contribution to the business and feels it is now time to transfer a 20% shareholding in HOLDCO or, subject to tax advice, all of his shares (i.e. his 30% shareholding) in HOLDCO to Des. Brian's 30% shareholding in HOLDCO has recently been valued at €1,400,000, while a 20% shareholding is valued at €900,000. If Brian transfers only 20% now, he will transfer the remaining 10% of his shareholding in a year or so.

Brian has not previously disposed of assets except for the sale of two residential properties some years ago. The only gift/inheritance which Des has received to date is €150,000 on his mother's death in 2009.

As a result of Brian's intention to retire, Matthew has been forced to consider his own retirement. Matthew does not intend to retire and sell his shares for at least fifteen years. However, after a recent meeting with a financial adviser he has decided that he would like to increase the amount of pension contributions that IDEAL makes on his behalf. IDEAL, for the last five years, has made annual pension contributions of €15,000 to a Revenue-approved pension scheme for Matthew.

REQUIREMENT:
Draft a tax report for Brian and Matthew, advising on the following:

(a) The VAT consequences associated with the sale of bespoke steel supporting beams to the VAT registered French customer and the Dubai hotel chain.

(6 marks)

(b) The tax implications for Matthew and for Building Supplies Ltd. in respect of the write off of the €50,000 loan given to Matthew in 2015.

(4 marks)

(c) The percentage shareholding Brian should transfer to Des now, i.e. is there any tax benefit in him transferring a 20% shareholding in Construction Holding Ltd. versus his entire 30% shareholding? You should consider the capital gains tax, capital acquisition tax, and stamp duty consequences of any gift, and provide clear advice, from a tax perspective, on the shareholding percentage which should be transferred now.

(24 marks)

(d) The corporation tax position for IDEAL in respect of any future occupational pension contributions for Matthew. Also, examine the tax implications for him of accessing his pension fund on retirement.

(6 marks)

[Total: 40 marks]

2. Leslie Hegarty is the founder of the chain, 'Leslie's Designs'. She owns 100% of the shares in LH Dublin Ltd. (LHD). LHD was incorporated in 2006 to run Leslie's first clothing store in Dublin. The Leslie's Designs brand has grown steadily over the years and has gained an excellent reputation for creating spectacular mother of the bride/groom outfits, bridesmaid dresses, and evening wear. As a result of the popularity of her clothing and demand across many counties in Ireland, she incorporated LH Cork Ltd. (LHC) to operate her Cork store and LH West Ltd. (LHW) to run her Galway store. LHC and LHW are both 100% subsidiaries of LHD. The companies made the following trading profits in the year ended 31 December 2018:

	Trading Profits	
LHD	€1,700,000	This is the first year that LHD's corporation tax liability, before any loss relief claims, will exceed the €200,000 limit.
LHC	€300,000	Leslie has confirmed that neither LHC or LHW has any cash-flow difficulties.
LHW	€650,000	

In 2016, Leslie met a friend called Zara with whom she worked closely while attending art college. Zara informed her that she was intending to emigrate to Australia and that her company, Zara Bridal Ltd., was for sale. Leslie decided to seize the opportunity to acquire the company, as she felt that the acquisition of Zara Bridal Ltd. would give her an immediate head start in the bridal design and sales sector in Ireland. Accessing this sector has been a strategic goal for Leslie's Designs for a number of years. LHD bought Zara Bridal Ltd. on 1 March 2017. Since acquisition, Leslie has spent a significant amount on the marketing and redesign of the company's website. As a result, Zara Bridal Ltd. has made a trading loss of €180,000 in the year ended 31 August 2018.

LHD supplies all three of its trading subsidiary companies with the vast majority of the inventory needed for their respective trades. All marketing costs are also invoiced directly to LHD by the external PR company and LHD then raises intercompany invoices for the respective marketing cost associated with each store. Therefore, a significant number of invoices are raised by LHD to LHC, LHW and Zara Bridal Ltd. Leslie is becoming increasing frustrated with the administration and compliance cost associated with all four companies and is wondering if there is any way that the VAT compliance across the group might be simplified.

She has decided to attend a bridal fashion event in a large hotel in London in September 2019. A selection of her new wedding dress designs will be on display on mannequins throughout the venue and some of her classic wedding dresses will be modelled in one of the fashion shows. Leslie has agreed that Zara Bridal Ltd. will hire a stand for one day at the event. She will be present herself at the stand, to take any queries regarding her designs. Leslie will then follow up on the queries when she returns to Ireland and, hopefully, convert them into sales.

REQUIREMENT:

Draft a memo to Leslie outlining the following:

(a) The most tax efficient way in which the losses in Zara Bridal Ltd. can be utilised by any one group company. You should provide reasoning for your choice of claimant company.

(8 marks)

(b) How VAT group registration could reduce administration and compliance overheads across the group. Your answer should detail how VAT group registration can be achieved and also the practical impact and benefits of such registration.

(6 marks)

(c) Whether Zara Bridal Ltd. is deemed to have created a taxable presence in London. (6 marks)

[Total: 20 marks]

3. It is 12 August 2019 and you work in a small accountancy practice in Dublin. Detailed below are some notes which you jotted down during your recent meeting with Gerard Duncan, a widower who is 68 years old.

Gerard has lived in Ireland all his life. He has recently decided to marry again, following the death of his first wife in 2006. In an attempt to sort out his estate before he remarries, Gerard has decided to transfer all of his assets, except the family home. He has two children: Chloe (22) and Jimmy (30).

Details of the assets which Gerard intends to transfer are outlined below:

Asset description	**Current market value**	**Notes**
Spanish villa	€600,000	Gerard's late wife purchased this villa in 1980 for €110,000. She left it to Gerard in her will. The villa had a market value of €650,000 at her date of death.
Site	€400,000	1 acre site on a separate plot which is adjacent to the Duncan family home. Bought in 1996 for €75,000.
Commercial units	€840,000	Located in Sandyford, the units were purchased at the height of the economic boom in 2005 for €750,000 (inclusive of stamp duty and legal costs). The units fell in value considerably in 2007, but they have been increasing steadily in value over the years since.

Gerard currently receives annual rental income of €70,000 from the units. This rental income stream is going to continue for the duration of the current lease agreements which are due to expire in 2030.

Jimmy is married to a Spanish native and they have lived in Seville, Spain, for the last four years. He has no intentions to ever return to Ireland to live. Gerard would like to transfer the Spanish villa to Jimmy immediately as he feels that Jimmy and his wife would make much better use of it as they could travel to it by car from Seville.

Gerard and his daughter Chloe have had a somewhat rocky relationship in recent years. However, he feels that Chloe has now matured considerably and is finally applying herself to her university studies. Despite this, Gerard is nervous to transfer his commercial units in Sandyford to her immediately. Gerard is content to transfer the site beside the family home to Chloe immediately. He feels that she is unlikely to sell this site given her emotional attachment to it. Chloe, for many years, has discussed her desire to build a permanent home for herself on this site.

Regarding the commercial units, Gerard is clear that he would like Chloe to ultimately own these assets. However, he wishes to use a fixed trust to hold the commercial units, with his two sisters acting as trustees, until Chloe is 30 years old. Gerard has stated that the trustees should receive €1,500 each per annum in respect of their time needed to manage the affairs of the trust.

Gerard is agreeable to Chloe getting the benefit of the rental income from the units during the life of the trust. However, he is keen to understand the implications of the trust retaining all the rental income during the life of the trust. Gerard has stated that once he understands the tax consequences associated with the rental income stream, he will then be very specific in the trust document regarding how much of the rental income Chloe is to receive during the life of the trust.

REQUIREMENT:
Advise Gerard of the tax implications:

(a) For him and Jimmy in respect of the proposed transfer of the Spanish villa. (3 marks)

(b) For him and Chloe in respect of the site transfer to her immediately. (5 marks)

(c) Associated with the creation of the fixed trust for Chloe and for him, the tax implications during the life of the trust, in respect of the income received by the trust, as well as the tax implications associated with the transfer of assets from the trust to Chloe when she reaches 30 years old.

(12 marks)

[Total: 20 marks]

4. It is August 2019 and you act as tax adviser for Edel Barrett, who is 49 years old, is Irish domiciled, and has lived in County Wicklow all her life. She works as an art teacher in a private college in County Wicklow. Edel has recently divorced and has decided to make some substantial changes to her life. She has decided to go travelling and has no fixed time scale but is open to living in various locations around the world for the next five to ten years. Edel does not intend to make any trips back to Ireland while travelling around the world.

Edel is planning to leave Ireland on 1 October 2019. She has informed her employer of her plans and it has been agreed that she can work until mid-September 2019. Along with her holiday entitlements, she will receive her normal monthly pay up until 30 September 2019. Her employer has also offered her the opportunity to work as an art teacher for six months, from mid October 2019, at their sister art college in the UK. Her UK salary will remain unchanged from her current remuneration levels. Other than her teaching salary, the only income which Edel receives annually is the rental profit from an investment property which she currently owns. She is hoping to sell this property by 30 September 2019 (further details below). Her taxable rental profits for the 2019 tax year are estimated to be €20,500 up to the proposed sale date.

Edel also owns a 45% shareholding in a successful advertising company, Barrett Advertising Ltd. (BAL). Ten years ago, she invested €45,000 in her sister's start-up advertising business, in return for a 45% shareholding in the company. Edel has never worked for the company nor has she ever been a director. She has been advised that, based on a recent valuation, her 45% shareholding is worth approximately €600,000. The increased value is as a result of the goodwill attaching to the company name and reputation. BAL does not own any Irish land or buildings. Edel has been reluctant to sell her shares in BAL as she has been advised that she will have a substantial tax bill to pay. However, a friend has recently told her that if she sells her shares in 2023, while she is travelling from country to country, she will not pay any tax on the disposal.

In order to raise some immediate funds for her travels, Edel has decided to sell her investment property. She originally bought this property in 2004 for €105,000 and incurred legal fees and stamp duty of €6,000. No VAT was charged on the original acquisition. The property comprises four small apartments. In 2013, Edel had a lot of difficulty securing suitable tenants. She, therefore, embarked on an extension and refurbishment project. By January 2015 the extension and renovation work was completed and she quickly got the apartments let to suitable tenants. She spent a total of £140,000 on the renovation work (this amount is VAT inclusive). Edel would be happy to sell the property if she can get a sales price of €500,000 (before VAT, if any is applicable). Ideally, given her travel plans, she would like to have any sales contract signed before 30 September 2019.

REQUIREMENT:

Advise Edel:

(a) Of her income tax position in Ireland for 2019 and 2020. You should set-out any income tax reliefs she may be entitled to.

(4 marks)

(b) On the tax implications of her disposing of her shares in Barrett Advertising Ltd in 2023. You should provide clear tax planning recommendations in your answer.

(6 marks)

(c) Of the VAT and capital gains tax consequences associated with the sale of her investment property before 30 September 2019.

(10 marks)

[Total: 20 Marks]

5. You are employed by an Irish trading company, Reverse Engineered Vision Ltd. (REVL). REVL was incorporated as a spinout by two university academics in 2016. The academics, Rachel and Christine, work full time for REVL, having taken a sabbatical from their university jobs for four years. Rachel and Christine are both directors in the company and each own 30% of the company's share capital. REVL's main trading activity involves offering unique night vision solutions for surveillance systems.

REVL is constantly enhancing its service offering and is currently in the process of developing specialist software to provide enhanced video analytics capability in difficult lighting conditions. The company's research and development (R&D) team has been working tirelessly on this project for the last eighteen months. In the year ended 31 December 2018, REVL spent the following amounts on its R&D programme: new high-resolution machinery for €25,000, general overheads of €7,000 and salary costs of €161,500. Before taking account of any additional R&D tax relief that may be available, REVL has a draft corporation tax liability of €65,000 for the year ended 31 December 2018. Rachel is keen to ensure that this corporation tax liability is reduced by as much as possible using R&D tax relief as this liability is considerably more than the corporation tax liability for the year ended 31 December 2017 (which was €20,000).

In addition to yourself, the company has three employees: Rachel, Christine and Fergus. Fergus recently completed his doctorate in vision systems and is a key member of the R&D team. He does not own any shares in REVL, and spends 80% of his time working specifically on the current R&D project. Rachel and Christine are involved in R&D activities for REVL for 50% of their working time. Salary details for Rachel, Christine and Fergus' in 2018 are outlined below:

	Gross salary	**Net salary (after PAYE)**
Rachel (50% of time on R&D)	€100,000	€62,000
Christine (50% of time on R&D)	€95,000	€59,000
Fergus (80% of time on R&D)	€80,000	€50,900

Rachel and Christine have heard that some of REVL's R&D tax relief can be surrendered to certain employees who work in research and they would like REVL to surrender some of the R&D tax relief for 2018, up to a maximum of €10,000 to each eligible employee.

When preparing the corporation tax computation for the year ended 31 December 2018 you initially used the 2017 computation as a starting point. As a result, you realised that there was no addback for depreciation in the corporation tax computation for the year ended 31 December 2017. When you reviewed the financial statements for this year, you note that the depreciation expense in the statement of profit or loss for assets was €55,000.

Since commencing with REVL, you have taken responsibility for preparing the bi-monthly VAT returns for the company. You submitted the May-June 2019 VAT return before going on annual leave. Since returning to work you have realised that your spreadsheet for calculating the net VAT position included a formula error which means that the VAT for May-June 2019 was under paid by €5,200.

REQUIREMENT:

(a) Advise on the amount of corporation tax payable by Reverse Engineered Vision Ltd (REVL) for the year ended 31 December 2018 after all relevant research and development relief is claimed. Your answer should include an analysis of the research and development relief that can be surrendered to key employees.

(You should assume that REVL carries on qualifying activities for research and development tax relief purposes.)

(13 marks)

(b) Recommend how the corporation tax and VAT errors should be addressed. (7 marks)

[Total: 20 marks]

END OF PAPER

SUGGESTED SOLUTIONS

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - AUGUST 2019

SOLUTION 1

TAX REPORT

To: Brian and Matthew
From: CPA
Date: August 2019
Re: The Construction Holdings Group – various tax queries

(a)
VAT on France and Dubai sales

Sales to VAT registered customer in France
The sale to a VAT registered business in France would be regarded as business to business (B2B) supplies. The basic rule is that the place of supply is deemed to be where the customer is established i.e. France.

The reverse charge will apply to this sale as the French customer is VAT registered. The Irish supplier (IDEAL) should quote the French customer's VAT number on the invoice and include a line stating, "The recipient is obliged to self-account for VAT in accordance with Article 56(1) Council Directive (2006/112/EC)". The invoice will therefore have 0% VAT on it. IDEAL must be able to prove that the goods have physically left Ireland.

4

Sales to Dubai
Where an Irish business, such as IDEAL, provides goods to business customers located outside the EU, the place of supply is where the business customer is located and is therefore outside the scope of Irish VAT.

2
6

(b)
Building Supplies Ltd (BSL) loan write-off
Matthew will be deemed to receive income from BSL when the company writes-off the loan. Matthew will be assessed to income tax on €50,000 grossed up at the standard rate of income tax i.e. €50,000 x 100/80 = €62,500.

2

Matthew will be subject to income tax under Case IV in 2019. He will be taxed at his marginal rate of tax and will receive a 20% tax credit of €12,500 in his income tax calculation. The tax credit cannot create a refund.

1

BSL will not be entitled to reclaim the tax it paid to Revenue in respect of Matthew's loan which is written-off. 1

4

(c)
Capital gains tax (CGT) for Brian on transfer of shares
When Brian gifts shares to his son, Des, CGT will arise. Market value will be imposed as the transfer is a gift between connected persons. Retirement relief will not be available as Brian is less than 55 years. Therefore, entrepreneur relief should be considered.

If entrepreneur relief (ER) is available to Brian on the disposal of his shares in Construction Holdings Ltd (HOLDCO), a 10% rate of CGT. There is a lifetime limit of €1 million of chargeable gains that qualify for the 10% rate. Chargeable gains that exceed €1 million are taxable at the rate of 33% on the amount in excess of €1 million.

For ER to apply, Brian must dispose of chargeable business assets and be a "relevant individual" or "qualifying person".

Chargeable business assets include ordinary shares in a qualifying company carrying on a qualifying business or ordinary shares in a holding company of a qualifying group, provided Brian (i.e. the individual selling the shares) owned 5% or more of the ordinary share capital in the company being sold. A holding company means a company whose business consists wholly or mainly of the holding of shares of all companies that are its 51% subsidiaries. A qualifying group means a group where the business of each 51% subsidiary (other than a holding company) consists wholly or mainly of carrying on a qualifying business. HOLDCO is a holding company of a qualifying group and Brian owns 5% or more of the shares in HOLDCO. Therefore, the shares qualify as chargeable business assets.

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. Neither HOLDCO not any of its trading subsidies operate such investment/development businesses, the qualifying business condition should be satisfied.

Brian must have been a director or employee of the qualifying company (or companies in a qualifying group) who is, or was, required to spend not less than 50% of his time in the service of the company or companies 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.

Brian must have owned the shares for three of the last five years. Brian has held shares in HOLDCO since 2012. Therefore, this holding condition is satisfied.

5

Brian's CGT position is outlined below for both a disposal of a 20% shareholding in HOLDCO and a 30% shareholding.

20% shareholding

		€
Proceeds		900,000
Less cost		(200)
		899,800
Less annual exemption		(1,270)
		898,530
CGT at 10%		89,853

30% shareholding

		€	
Proceeds		1,400,000	
Less cost		(300)	
		1,399,700	
Less annual exemption		(1,270)	
		1,398,430	
CGT at 10% on €1m		100,000	
CGT at 33% on	398,430	131,482	
Total CGT		231,482	**3**

Stamp duty on share transfer

Stamp duty at a rate of 1% will apply to the shares transferring. Stamp duty will be payable by Des within 44 days of the transfer.

20% shareholding – €900,000 x 1% = €9,000
30% shareholding - €1,400,000 x 1% = €14,000 2

Capital acquisitions tax (CAT) for Brian

The availability of business relief (BR) should be considered for Des. A gift/inheritance of shares in a family company may qualify for a 90% reduction in the market value of the shares for CAT purposes.

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

A minimum period of ownership test must be satisfied by Brian. To qualify for business relief, the shares must have been continuously in the beneficial ownership of Des for 5 years prior to the gift.

The shares must qualify as "relevant business assets" for BR to apply. Unquoted shares of a trading or professional company can qualify, provided the recipient (i.e.) Des satisfies one of the following conditions on the valuation date, after taking into account the gift/inheritance received:

- he must control more than 25% of the voting rights of the company in his own name – this condition will only be available if Brian transfers a 30% shareholding; or
- the company is, after taking the gift or inheritance, under the control, i.e. more than 50%, of the recipient and his/her relatives – as 70% of HOLDCO is held by Matthew (not a relative) this condition cannot apply to Des; or
- he or she controls 10% or more of the issued share capital of the company and has been a full-time working director or employee of the company or of any company in the same group of companies throughout the period of five years ending on the date of the gift or inheritance – Des has only worked for one year with Engineering Solutions Ltd (ESL).

Des will only be able to fulfil the above shareholding test if he receives a 30% shareholding. Therefore, business relief will not be available if Brian only transfers a 20% shareholding now.

The normal CAT rules for valuing shares in private companies are used for the purposes of business relief. The special rules which apply to the valuation of shares in a holding company of a group if the group contains a company which carries on a non-qualifying activity, are not relevant for HOLDCO as the three subsidiary companies of HOLDCO are carrying on trading activities.

Clawback of business relief will happen if the trading activity of the company does not continue to be carried on for at least six years.

5

Where BR is not available (where Des is only gifted a 20% shareholding) the CGT/CAT same event credit should be claimed. This credit can be given in Des' CAT computation where the same event gives rise to CGT and CAT. In this situation, the CGT paid may be credited against any CAT due. The CGT credit will cease to apply if the asset is disposed of within two years after the date of the gift. The same event credit should be available if Brain only transfers 20% of his shareholding to Des now.

2

Des' CAT position is outlined below for both options: if he receives a 20% shareholding in HOLDCO or a 30% shareholding.

20% shareholding	**€**
MV	900,000
Less stamp duty	(9,000)
	891,000
Less annual exemption	(3,000)
Less Group A remaining	(160,000)
	728,000
CAT at 33%	240,240
Less same event credit	(89,853)
CAT due	150,387

30% shareholding	**€**			
MV	1,400,000			
Less stamp duty	(14,000)			
	1,386,000			
Less BR	(1,247,400)			
	138,600			
Less annual exemption	(3,000)			
Less Group A remaining	(160,000)	Group A remaining	4,600	
	0			
CAT at 33%	0			**4**

Advice re amount of shareholding

Summary of CGT and CAT position

	CGT	**CAT**	**Total**
20% shareholding	89,853	150,387	240,240
30% shareholding	231,482	0	231,482

As you can see from the above, the combined CGT and tax cost is less if the 30% shareholding is transferred. This is mainly because of the availability of CAT business relief. The additional benefit of transferring 30% now is that Des will still have a small amount of group A threshold remaining (€4,600).

From a tax point of view, it is advisable that Brian transfers all his shares (30% shareholding) to Des now so the business relief is available.

If Brian only transfers a 20% shareholding now and 10% in a few years' time, BR may be available at that suture date. However, the special market value rules for CAT will mean that the value f the shareholding for CAT will be treated as a sixth share of the market value of a 30% shareholding. In addition, CGT will also be due as well as stamp duty.

3

24

(d)

IDEAL pension funding

From IDEAL's perspective, company pension contributions are deductible for corporation tax purposes on a paid basis. Where IDEAL's occupational pension scheme is not sufficiently funded to provide for a pension (of up to two-thirds of the individual's final salary depending on years' service) for Matthew, then the company may make lump sum top-up payments on a periodic basis to maximise the fund and meet future pension requirements for Matthew. A corporation tax deduction may not be available in the year of payment but may need to be spread over a period of up to five years. However, given that Matthew does not intend to retire for a number of years, where IDEAL's occupational pension contributions are increased and maintained at an increased level on a continual basis, the issue of spreading will be avoided.

2

On Matthew's retirement, he may receive a portion of his pension fund as a tax-free lump sum. If he retires in 15 years, he will have in excess of 20 years of pensionable service with IDEAL and he should be entitled to a maximum tax-free lump sum payment from his pension fund of 1.5 times final pensionable remuneration. As Matthew is a director who will hold more than 20% of the ordinary share capital at retirement, final pensionable remuneration will be the average of the total emoluments for any three or more consecutive years ending not earlier than 10 years before the retirement date.

Where there is a fund remaining after payment of 1.5 times final pensionable remuneration, this is used to purchase an annuity. The alternative is to take up to 25% of the accumulated fund as a cash lump sum and with the balance, either invested in an approved retirement fund; used to purchase an annuity and/or taken by Matthew as taxable cash.

2

It should be noted that, under current legislation, the tax-free lump sum amount is subject to a lifetime limit of €200,000 and the excess up to €500,000, i.e. €300,000, is taxed at 20%. Where Matthew's 'lump sum' exceeds €500,000, the excess is taxed at his marginal rate of income tax plus USC.

2

6

SOLUTION 2

MEMO
To: Leslie
From: CPA
Re: Various queries – Leslie's designs
Date: August 2019

(a) Corporation tax losses

Group relief is only available where the accounting period of both the loss-maker (Zara Bridal Ltd) and profitmaking company/companies wholly/partly correspond. The loss-making company, Zara Bridal Ltd, has a 31 August 2018 year end while the other group companies all have a 31 December 2018 year ends.

2

The potential corporation tax liabilities for the profit-making group companies are outlined below:

LHD	€1,700,000 x 12.5%	= €212,500
LHC	€300,000 x 12.5%	= €37,500
LHW	€650,000 x 12.5%	= €81,250

As neither LHC nor LHW has any cashflow difficulties, then it is most advantageous to allocate the corresponding losses in Zara Bridal Ltd to LHD. This will help ensure that LHD's corporation tax liability can be kept below €200,000 and hence it will not be treated as a 'large company' for the purposes of having to make preliminary tax payments in the year ended 31 December 2019.

2

The corresponding accounting period for LHD and Zara Bridal Ltd runs from 1 January 2018 to 31 August 2018. That is, eight months. Therefore, the maximum group relief available is the lower of:

- Loss of €180,000 x 8/12 = €120,000
- Profit of €1,700,000 x 8/12 = €1,133,333 2

LHD can make a claim to utilise €120,000 of the losses incurred by Zara Bridal Ltd. LHD's taxable income for the year ended 31 December 2018 will be reduced to €1,580,000 and its corporation tax liability will be reduced to €197,500. Therefore, when the preliminary tax obligations are being considered for LHD for the year ended 31 December 2019, the company will not be deemed to be large for the purposes of its preliminary tax obligations.

2

8

(b) VAT group

The registration of a VAT group comprising all four group companies (i.e. LHD, LHC, LHW and Zara Bridal Ltd) would be beneficial from an administrative point of view as VAT invoices are not necessary in respect of transactions between the individual group members.

VAT group registration would also benefit cash flow within the group as it allows one company to pay another company without VAT arising.

2

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

- two or more persons established in Ireland and at least one of them is a taxable person – this condition should be satisfied.

- are closely bound by financial, economic and organisational links – this condition should be satisfied given the common ownership and sales happening between group members.

and

- it is necessary or appropriate for the purposes of efficient and effective administration, including the collection of VAT.

If the group of companies wish to form a VAT group they must jointly apply in writing to the VAT section of their local Revenue District to secure approval for group registration. VAT group registrations cannot be backdated. 2

Impact of VAT group registration
If group VAT registration is granted by Revenue, the group will nominate a single group remitter for VAT purposes, who will be responsible for VAT compliance for the entire group. The remitter will be the only entity in the group to file a VAT return. The other members of the group are known as non-remitters.

The group remitter must, therefore, lodge all VAT returns and make all payments for the entire group with the Collector-General.

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

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

2
6

(c) Activities in London
If Zara Bridal Ltd is deemed to have created a permanent establishment in London, then it will have created a taxable presence for the company in the UK. With some profits otentially subject to UK tax.

A permanent establishment (PE) is defined as "a fixed place of business in which the business of the enterprise is wholly or partly carried on". This implies three conditions for a permanent establishment to exist:

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

2

Article 5 provides examples of a PE, which include a place of management, a branch office, a factory or workshop. Zara Bridal Ltd will not have created any of these as a result of hiring a stand at the event. 1

Zara Bridal Ltd will merely be displaying its goods (i.e. the wedding dresses) at the event in London. The treaty specifically states that the use of facilities solely to display goods will not be deemed a PE. In addition, Zara intends to only take queries while at the event in London. She will then follow up on the queries and conclude any sales from Ireland. 2

All sales of Zara Bridal Ltd will be taxable in Ireland only. 1
6

SOLUTION 3

(a) Transfer of Spanish villa to Jimmy immediately

Gerard will have to consider his capital gain tax (CGT) exposure in respect of the transfer of the Spanish villa. As he is tax resident in Ireland, he will be subject to Irish CGT on disposals of his worldwide assets.

Gerard will be deemed, for CGT purposes to have disposed of the villa at market value of €600,000. His base cost will be the market value on which he inherited from his late wife (€650,000). He will therefore have no CGT exposure in respect of this disposal. However, the €50,000 loss that arises will only be available to offset against chargeable gains on future disposals to Jimmy.

1

Irish capital acquisitions tax (CAT) will apply to the transfer as the disponer, Gerard, is Irish tax resident.

The CAT liability will be €94,710 ((€600,000 - €3,000 - €310,000) x 33%). 1

If the transfer documents is executed outside Ireland, no Irish stamp duty should arise.

Spanish tax advice should be sought in respect of the transfer. 1

3

(b) Tax implications of the site transfer to Chloe

CGT needs to be considered from Gerard's perspective and CAT and stamp duty need to be considered for Chloe.

In respect of the site transfer directly to Chloe, a CGT relief is relevant. The CGT relief available under section 603A TCA 1997 applies where a parent transfers land to a child to enable that child to build a principal private residence.

For the relief to apply, the market value of the site must not exceed €500,000 and the size must not exceed one acre. Also, for the relief to apply, the purpose for which the land is transferred to Chloe must be to enable her to construct a dwelling on the land which will be occupied by her as her principal private residence.
If Chloe is gifted the site under these terms, then she must construct a residence on the land and occupy it as their principal private residence for a period of three years. Otherwise there will be a clawback of the relief. In addition, the site may not be disposed of by Chloe, other than to her spouse/civil partner, within the three-year period from commencement of occupation of the principal private residence.

If Chloe breaches the conditions of the relief, then the capital gain which was not charged on Gerard on the original transfer of the land to her will be deemed to accrue to Chloe at the time of disposal of the property. That is, a gain of €325,000 (€400,000 - €75,000).

2

Chloe will be liable to pay stamp duty at a rate of 6% on the transfer of the site. Therefore, stamp duty of €24,000 will be due within 44 days of the transfer.

1

From a CAT perspective, Chloe will have an immediate CAT liability as follows:

CAT for Chloe on site

	€
MV of site	400,000
Less annual exemption	(3,000)
Less stamp duty	(24,000)
Less Group A threshold	(310,000)
Amount left chargeable to CAT	63,000
CAT at 33%	20,790

If the transfer happens before 31 August 2019, then the CAT pay and file deadline will be due on 31 October 2019. If the transfer happens on or after 1 September 2019, the CAT pay and file deadline will be 31 October 2020.

2

5

(c) Assets to gifted to Chloe via a fixed trust

CGT for Gerard on creation of trust

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

Gerard's immediate CGT exposure on the Sandyford commercial property units is outlined below:

CGT for Gerard re transfers to trust

	€
MV of commercial units	840,000
Less cost	(750,000)
	90,000
Less annual exemption	(1,270)
	88,730
CGT at 33%	29,281

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

2

Stamp duty for fixed trust

Stamp duty at a rate of 6 % will apply to the transfer of commercial properties to the fixed trust. Therefore, stamp duty of €50,400 (€840,000 x 6%) will be due within 44 days of the transfer. The trust will, therefore, need funds to discharge this stamp duty liability.

1

CAT for Chloe on creation of fixed trust

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

Tax implications for trust in respect of income received

Gerard's sisters, as trustees of the fixed trust, will be responsible for dealing with the income and capital of the trust as well as ensuring that all tax liabilities arising on income or gains of the trust are correctly dealt with.

As Gerard intends for Chloe to receive the commercial properties when she is 30, it is unlikely that the trustees will sell the trust property.

The trust property will be generating rental income to the value of €70,000 per annum. With regard to income tax, the trust will be liable to income tax at 20%. Trustees are not entitled to claim the personal credit, allowances, exemptions or reliefs from income tax that are available to individuals. In addition, the trustees are not subject to PRSI or USC in relation to trust income. Gerard's sisters, as trustees, will have to submit annual returns of income on behalf of the trust.

2

The trustees will not be entitled to claim an income tax deduction in respect of their annual trust expenses of €1,500 each, in the calculation of taxable trust income.

If the trustees mandate income directly to Chloe, then Revenue may assess Chloe to income tax directly instead of the trustees. As Chloe is still a student, she may well have her personal tax credits available and her basic rate band to absorb some of the rental income.

2

Tax implications of the appointment of the trust assets to Chloe when she is 30

When the trustees appoint the trust assets to Chloe at 30, they are deemed to dispose of the property at that time and immediately reacquire it at its market value. The trustees must pay CGT on any increase in value between the acquisition cost (€840,000+€50,400 stamp duty) and the deemed market value at the date of appointment. The rate of CGT will be 33%.

2

CAT can only arise when a person takes a beneficial interest in possession over property. Therefore, Chloe will be subject to CAT when the commercial units are transferred from the trust to her. Market value of the commercial units at the time of appointment will be used for her CAT computation. As a result of the site transfer, Chloe will have already utilised her Group A threshold. She will therefore potentially have a CAT liability at this point.

2

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

Stamp duty does not arise on the appointment of assets from the trust to Chloe when she is 30 years old. 1

12

SOLUTION 4

(a) Edel – income tax in 2019 and 2020

Edel will be resident in Ireland in 2019 as she has been in Ireland for more than 183 days. She is also domiciled and ordinary resident. She will therefore be subject to tax in Ireland on her worldwide earnings. Her income subject to Irish income tax in 2019 will be her Irish salary, her Irish rental income and her UK salary from mid-October 2019 to 31 December 2019. This income will also be subject to PAYE in the UK. She should be entitled to double tax relief on the UK income up to the Irish effective rate suffered on that income.

2

However, Edel should make a split year relief claim in 2019. Split year relief should be available to Edel, as she intends to be non-resident in Ireland in 2020. That is, the tax year following her departure.

The availability of split year relief will mean that Edel's UK salary earned from her date of departure from Ireland to the end of the 2019 tax year, should not be subject to Irish income tax. Where split year relief is claimed, Edel will only be subject to Irish income tax on her salary earned in Ireland pre 1 October 2019. Despite claiming split year treatment, Edel should be entitled to the full 2019 tax credits and standard rate cut off.

2
4

(b) Capital gains tax – temporary non residence rules

In 2023 Edel will be Irish domiciled (D). She will not be Irish resident (R) or Irish ordinary resident (OR). As a result, the Irish capital gains tax (CGT) legislation states that she will only be subject to Irish CGT on the disposal of Irish specified assets. The shares in Barret Advertising Ltd (BAL) would not be regarded as Irish specified assets. However, there is an extra consideration for "temporary non-residents" who dispose of certain assets.

This anti-avoidance measure applies to the disposal of "relevant assets" sold by an Irish domiciled individual. Relevant assets include a shareholding in a company the value of which is either 5% or more of the value of all that company's issued share capital or is worth €500,000 or more. As Edel's shareholding is worth €600,000, the shares will be regarded as relevant assets for the purposes of the anti-avoidance measure.

2

In order for Edel to fall outside the anti-avoidance rule, she will need to remain outside of Ireland for a period of more than five intervening years from the date of departure to the date of return. As you can see from the table below, the earliest year in which Edel should resume Irish tax residency is 2026.

2019	Year of departure	D, R and OR	
2020	1st year of non residence	D and OR	
2021	2nd year of non-residence	D and OR	
2022	3rd year of non-residence	D and OR	
2023	4th year of non-residence	D	
2024	5th year of non-residence	D	
2025	6th year of non-residence	D	
2026	Earliest year to become R		2

If Edel disposes of the shares in 2023 and becomes Irish tax resident again before 2026, then a CGT charge will arise. The CGT will be calculated by deeming her shares in BAL to be disposed of at their market value on the last day of the year of departure i.e. 2019. If there is an increase or decrease in the market value of the shares between the last day of the year of departure and the date they were disposed of, then the market value of the assets on the date they were disposed of will be used for the purposes of the CGT charge. The CGT charge should be included in Edel's return and the tax arising thereon must be accounted for in the year in which she is again taxable in Ireland.

2
6

(c) VAT on sale of investment property

Edel originally acquired the property in 2004. She was not charged VAT on the original acquisition of the property. However, as Edel has carried out extension and renovation work on the property, this may make the property 'new' for VAT purposes.

The VAT on property rules require that VAT is charged on the sale of the property, if the property is considered new. A property is considered new if for a maximum period of five years from the date on which the property itself or a development of the property (other than a minor development) is complete.

2

It is therefore necessary to consider if the work carried out on the property will qualify as 'minor development'. Minor development is defined as development that did not adapt the property for a materially altered use and the cost of the development did not exceed 25% of the consideration now being received for the sale of the property.

The property was used for residential purposes before the extension and renovation and it continued to be used for residential purposes after the work. Therefore, the use of the property was not adapted as a result of the development work.

2

The sales proceeds for the property are expected to be €500,000. 25% of €500,000 is €125,000. As the property was extended and renovated at a cost of €140,000, this development work will not be regarded as 'minor'.

The development work was complete on the property in January 2015. Therefore, the five year rule will apply up to January 2020. Therefore, if the sale of the property happens before this date, as the property is considered new, VAT will have to be charged on the sale.

2

The rate of VAT will be 13.5%. Therefore, the sales price will be €567,500 with €67,500 VAT due to Revenue in respect of the sale.

2

In terms of CGT, Edel's position will be as follows:

		€
Sales proceeds		500,000
Less cost	105,000	
Less costs of acquisition	6,000	
Less enhancement	140,000	
		(251,000)
Gain		249,000
Less annual exemption		(1,270)
Chargeable gain		247,730
CGT at 33%		81,751

2

10

SOLUTION 5

(a) Reverse Engineered Vision Ltd (REVL) should be entitled to research and development (R&D) tax relief in respect of this qualifying expenditure.

Qualifying expenditure includes: normal revenue-type expenditure which is deductible for corporation tax purposes including salaries and overheads. Expenditure on plant and machinery also qualifies for the credit, provided proper records are kept.

No minimum spend is required for R&D relief and there is no upper limit. The expenditure on R&D that qualifies for the credit must be net of grants.

R&D tax relief operates by giving a 25% R&D tax credit to the corporation tax liability of the company. 3

R&D tax relief is available as follows:

	€	
Machinery	25,000	
Overheads	7,000	
Salaries	161,500	
Qualifying expenditure	193,500	
R&D tax credit at 25%	48,375	
Less surrender to key EE	(10,000)	
Credit due against CT	38,375	
CT liability before relief	65,000	
Less R&D credit	(38,375)	
CT due	26,625	3

Therefore, the corporation tax liability for REVL will be €26,625 for the year ended 31 December 2018.

REVL can surrender some of its R&D tax relief for the remuneration of key employees engaged in the R&D process. A "key employee" is an individual who:

- is not, or has not been, a director of the company and is not connected to a director of the company – this therefore means that neither Rachel or Christine can benefit from the surrender of R&D relief
- does not have, or has never had, a material interest in the company or is not connected with a person who has a material interest in the company;
- performs at least 50% of their activities "in the conception or creation of new knowledge, products, processes, methods and systems"; and
- has 50% or more of their emoluments which qualify for the R&D tax credit.

3

Fergus will therefore qualify as a key employee.

The quantum of credit that can be surrendered to Fergus is limited to the amount of corporation tax due by the company prior to taking the R&D credit into consideration. REVL only intends to surrender a maximum amount of €10,000 to any key employee and this is less than its corporation tax liability before relief of €65,000.

In terms of Fergus claiming the relief, his effective rate of tax payable cannot be reduced below 23%. Fergus, before the relief, has an effective rate of tax of 36% (1-50,900/80,000). Fergus must make a claim to Revenue in order to receive a tax refund.

4

13

(b) As no Revenue audit letter has been received to date, self-correction should be considered. If REVL can come within the time limits for self-correction then the company carry out any required adjustments without the imposition of penalties. However, REVL will incur interest on late payment of tax as well as having to pay the additional tax payable as a result of the adjustment.

The conditions for self-correction are as follows:

- the taxpayer must notify Revenue in writing of the adjustments to be made;
- the taxpayer must include a computation of the correct tax and statutory interest payable;

- a payment in settlement must accompany the submission; and 2

From a corporation tax perspective, the company has failed to add back the depreciation expense of €55,000. This will have led to the corporation tax for the year ended 31 December 2017 being underpaid by €6,875.

1

In respect of corporation tax, the self-correction must take place within 12 months of the due date for filing the corporation tax return. For the year ended 31 December 2017, self-correction can be made within 12 months of the due date for filing the 2017 return. The 2017 return must have been filed on/before 23 September 2018, so self-correction can be made before 23 September 2019. Therefore, self-correction should be carried out as a matter of urgency.

2

In respect of the VAT underpayment of €5,200, it should be noted that as the net underpayment of VAT for the two-month period May-June 2019 is less than €6,000, the €5,200 underpayment can be included (without interest or notification to Revenue) as an adjustment to the July-August 2019 VAT return.

2

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