CPA IRELAND | CERTIFIED PUBLIC ACCOUNTANTS

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - AUGUST 2017

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

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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.

Case Study

1. As a Certified Public Accountant, you recently had a meeting with a prospective new client, Tom Donohue. Tom has always calculated his own tax liabilities but as he is now considering some larger transactions and has received a Revenue letter inquiring into a past transaction, he has decided he needs some tax advice from a qualified accountant.

Tom is 65 years old. He has worked as a publican all his life and has decided that he is going to sell the business to one of the larger pub chains operating in Ireland. He feels that he is getting too old for the late-night shifts and the stress of running the business. Although he has owned and run his sole trade pub business profitably since 1984, he feels that he would like to retire in the next year. Tom will turn 66 on 15 February 2018. Tom has been VAT registered in respect of his pub business since 1990.

He has been approached by All Pubs Ireland Ltd (APIL) to sell his business. APIL owns and manages ten pubs in Dublin. They have offered Tom €850,000 for his business as they think it has great potential due to its city centre location. The statement of financial position for Tom's business as at 31 March 2017 includes the following assets and Tom has provided details of the market value, net book value and, where relevant, the tax written down value of each category of asset:

	Market Value €	Net Book Value €	Tax Written Down Value €
Pub building	450,000	450,000	450,000
Fixtures & fittings	25,000	55,000	65,000
Plant & machinery	45,000	40,000	35,000
Inventory	110,000	110,000	-
Trade receivables	20,000	22,000	-
	650,000	**677,000**	**550,000**

The pub premises was inherited by Tom from his father in February 1984. The market value used at the time of the inheritance for capital acquisitions tax purposes was €50,000. Tom carried out some structural renovation work on the pub in March 1994, worth €70,000. No further development work has been carried out to the premises since, except for ongoing repairs and maintenance. The market value of the fixtures & fittings and the plant & machinery are less than the original cost of these items.

Tom is sure that the profits for the business have increased in the first four months of the financial year to 31 March 2018. He is therefore considering holding off on selling until after the final profit figure is available for the year to 31 March 2018, as he feels he might be able to obtain a higher price for the business based on the increased goodwill associated with increased profits.

In December 2014, Tom was gifted an acre of land in Longford from his brother. At the time of the gift, he did not get a professional market valuation for the land and used a value of €30,000 for the purpose of filing his capital acquisitions tax (CAT) return and paying the stamp duty liability. As Tom had previously received a large inheritance from his uncle, he paid CAT of €9,900 and the amount of stamp duty paid was €600. Tom recently received a letter from Revenue advising him of their intention to carry out an audit of the CAT return made in respect of the December 2014 gift. The letter requests that a formal market valuation for the land, by a competent valuer, as at the date of the gift is provided. The letter states that Revenue believe that the market value of the land in December 2014 is higher than what Tom has declared. Tom has approached a number of local valuers/estate agents and they have consistently stated that the market value of the land in December 2014 was €55,000.

Tom would also like some advice regarding a greenfield site he acquired in Howth, in 2007. He engaged a local contractor to build a house on the site in early 2008. Unfortunately, by the time the house was completed in 2009, the market had changed dramatically and Tom was unable to sell the property. The property has been let for the last three years and Tom has suffered annual VAT clawbacks in respect of the VAT reclaimed on the construction of the property. He has just received an offer of €550,000 for the property and is considering accepting this offer. Tom believes that if he receives €550,000 for the property, he will break even, and therefore, he feels he should have no capital gains tax to pay on the sale.

REQUIREMENT:

Draft a report for Tom Donohue which outlines the following:

(a) The income tax, capital gains tax and VAT implications in respect of the sale of his pub business. You should include details of any tax reliefs available to him and also any relevant tax planning points with regard to such reliefs.

(17 marks)

(b) The approach Tom should take with Revenue in respect of the audit letter received, including advice regarding the likely penalties he will incur with particular reference to the undervaluation from a capital acquisitions tax and stamp duty perspective.

(15 marks)

(c) VAT advice in respect of the sale of the residential property. As a result of your VAT analysis, provide Tom with an update on his capital gains tax position.

(8 marks)

[Total: 40 marks]

Relevant tax reference material for this case study:

Surcharge for Undervaluation - Section 53 Capital Acquisitions Tax Consolidation Act 2003

Revenue's opinion of the market value of the asset in the return as % of the market value returned	**Surcharge**
Equal to or greater than 0% but less than 40%	30%
Equal to or greater than 40% but less than 50%	20%
Equal to or greater than 50% but less than 67%	10%

2. It is mid-August 2017 and you work for a medium sized accountancy practice in Cork. Techno Computers Ireland Ltd. (TCIL) and Techno Computers Research Ltd (TCRL) have been your biggest clients for the last few years. Both these Irish tax resident trading companies are wholly owned subsidiaries of a US multinational, Techno Computers Inc (TCI). The finance director of both companies, Peter Cavanagh, has contacted your office recently with two employee related queries and one query regarding the research and development (R&D) relief available in Ireland.

Firstly, Peter wished to let you know that a new employee may need to be added to the payroll of TCIL from January 2018. A sales person called Giselle Beauchamp, who has worked for TCI for the past three years, may be joining the company for four years commencing on 1 January 2018. She will arrive in Ireland in November 2017 to get settled before commencing her employment from 2 January 2018. Giselle has never been tax resident in Ireland before. It is hoped that Giselle's marketing knowledge will help increase the sales of TCIL. It has been agreed that Giselle will work full time for TCIL and that she will receive a salary of €625,000 (which includes a €125,000 bonus) plus a company car and other benefits to the value of €42,000 per annum. She has not fully committed to coming to live in Ireland yet as she is concerned about the high levels of taxation in place.

Secondly, Peter discussed the tax position of a long-term employee of TCRL, Martha Mullen. Martha has worked for TCRL as a programmer for 12 years. She is Irish tax resident and lives in Cork with her family. Martha has always been employed within the Cork based R&D department of TCRL until April 2017 when she was sent to Brazil to carry out some R&D work there. She spent 80 days working in Brazil in 2017. She is back in Ireland where she will stay until the end of the 2017 tax year. Martha's annual salary from TCRL is €150,000, including a car and medical insurance BIK of €20,000.

Finally, Peter informed you that he has calculated the corporation tax liability for TCRL to be €230,000 for the year ended 31 December 2016. However, this is before any R&D tax relief has been claimed. Peter is currently concerned about the cash flow position of TCRL and is keen to have as little to pay as possible in September 2017. The corporation tax liability for the year ended 31 December 2015 was €40,000. During 2016, TCRL expanded its R&D programme. Not only did the company construct a new building for €1.5 million (including a site cost of €500,000) but it also purchased new machinery for €140,000 which will be specifically used for the new programme of R&D activities. The newly constructed building will be used 20% by administration staff and 80% by R&D staff. Peter estimates that the 2016 salary cost relating to staff involved directly in the R&D activities was €180,000.

REQUIREMENT:
Draft a memorandum for your next meeting with Peter Cavanagh. Your memo should include the following:

(a) Advice on the tax relief available for Giselle in Ireland for 2018. You should include details of the conditions of any such relief and calculate how much Giselle should be entitled to if she qualifies for the relief.

(8 marks)

(b) Advice on the tax relief available for Martha in Ireland in respect of the time she worked abroad in the 2017 tax year. You should include details of the conditions of any such relief and calculate how much Martha should be entitled to if she qualifies for the relief.

(6 marks)

(c) Advice regarding the corporation tax position for the year ended 31 December 2016 and year ended 31 December 2015 as a result of the R&D expenditure incurred by Techno Computers Research Ltd.

(6 marks)

[Total: 20 marks]

3. You are a recently qualified Certified Public Accountant and have just had a meeting with Denis Johnstone. Denis is 50 years old and the sole shareholder of Johnstone Galway Ltd. (JGL) and Johnstone Limerick Ltd. (JLL). Denis trained as a chef, but for the last 30 years he has been a hotelier.

Denis incorporated JGL in May 1987 and paid €100 for the ordinary shares in the company. This company has been trading profitably for the last 20 years and continues to grow its turnover as a result of the strong marketing team employed by JGL. The current market value of JGL is €1,500,000.

In 2005, the opportunity arose for Denis to purchase a struggling hotel in Limerick. Denis decided to purchase this hotel and operate its trade through JLL. He paid €1,000 for the ordinary shares in this company in March 2005 when it was incorporated. Despite a recent refurbishment and some investment in the marketing of the hotel, JLL has been making losses for the last 6 years. The current market value of JLL is €600,000.

Both, JGL and JLL prepare their financial statements to 31 December each year. When it comes to the finalisation of the corporation tax liabilities every year, Denis becomes very annoyed at the fact that he has to pay tax on the profits of JGL and cannot get any relief for the current year losses incurred in JLL. Previously, you had advised Denis that the only way to offset current year corporation tax losses against current year profits of another company was to create a corporation tax group. However, Denis always advised that he will set up a group at some point in the future, when he has some time.

At a recent tourism conference, Denis was talking to another hotelier who had recently implemented a holding company structure. The fellow hotelier informed him that a holding company is the most tax efficient way to hold a number of different companies as it allows for efficient group relief of losses, inter-company lending and the fact that there is an exemption from capital gains tax if a company is sold by the holding company. Denis has now decided that he would like to set up a holding company called Denis Johnstone Holdings Ltd. from 1 January 2018.

JGL currently owns a site in Limerick. This site was bought by JGL for €50,000, as the company had some excess cash in 2003. The site is of no use to the trade of JGL and it would be of much more benefit to the trade of JLL as it is adjacent to the Limerick hotel's carpark. Denis noted from the customer feedback last summer that the lack of parking was a problem for guests at the Limerick hotel. He is therefore keen that this Limerick site be turned into another carpark for the Limerick hotel which is run and owned by JLL. The site currently has a market value of €300,000 and remains undeveloped. Denis would like to transfer the site from JGL to JLL, rather than JGL renting it to JLL.

REQUIREMENT:

Draft a file note for Denis Johnstone which:

(a) Outlines how a holding company structure can be put in place maximising the tax reliefs available to ensure that no tax liabilities arise as a result of the reorganisation.

(13 marks)

(b) Provides appropriate tax advice regarding the proposed transfer of the site from Johnstone Galway Ltd. to Johnstone Limerick Ltd. You should include details of any tax reliefs that may be available.

(7 marks)

[Total: 20 marks]

4. As a qualified Certified Public Accountant, you have dealt with the file of Clodagh Boyd for the past five years. Clodagh is 58 years old and a widow with three children: Danny (38); Timothy (32) and James (17).

Clodagh came into your office yesterday, 31 August 2017, for a meeting to discuss some immediate gifts she would like to make as well as a trust she would like to set up. A summary of the meeting notes is outlined below.

Past gifts
Danny and Timothy have already received gifts from Clodagh in the form of a commercial property each. James has not received any gifts or inheritances to date.

Immediate gifts to her two grandchildren
Danny is the only one of Clodagh's sons to have children. Therefore, Clodagh has two grandchildren, Jack (13) and Sally (19). Clodagh has recently cashed in some prize bonds to the value of €150,000. She used the money to purchase two terraced houses in January 2017 for €70,000 each (legal fees were €1,250 per house and stamp duty was also paid). The houses are now valued at €75,000 each. Clodagh would like to transfer one house to each of her grandchildren immediately. Neither Jack or Sally have ever received any previous gifts or inheritances in their lifetime.

Trust for James
After the above transfers have happened, the only remaining property assets which Clodagh holds will be the family home and a small bungalow located near the family home. The family home has a current market value of €300,000. Clodagh inherited it on the death of her husband in 2005 when it had a market value of €230,000. She has lived in this property as her principal private residence since 1990 when her husband originally purchased the property for €35,000. Clodagh stated that she would like James to ultimately own the family home. She feels that this property is too large for her on her own. She intends to move into the nearby small bungalow instead. James has always been the most unsettled of her children. He is currently finishing his secondary education and she hopes that he will progress to third level education. However, James intends to travel the world for a few years before deciding on a career. As a result of these intentions, Clodagh does not feel that she can transfer the family home directly to James now. She would like advice regarding the set up of a trust in which James will be the ultimate beneficiary of the family home. Danny and Timothy have agreed to be trustees of the trust and Clodagh intends to give them complete discretion to decide when the property should be given absolutely to James. She intends for the family home to be rented out for the duration of the time it is in the trust. The rental profits should be used to maintain the property and Clodagh does not want any trust income to be paid out to James during the life of the trust.

REQUIREMENT:

(a) Appraise Clodagh of the tax implications for her and for her grandchildren of the immediate gifts to them.

(8 marks)

(b) Advise Clodagh on the type of trust she needs to establish in respect of the property which she wishes to be ultimately owned by James. You should also include the tax implications on the creation of the trust, during the lifetime of the trust, and on the transfer of the house from the trust to James at some point in the future.

(12 marks)

[Total: 20 Marks]

5. It is now 31 August 2017 and you have recently been engaged by George Hetherington to advise him on a number of Irish tax issues.

George is a UK domiciled individual, having lived in London all his life until he moved to Dublin in February 2013. 2013 was the first tax year that he was deemed to be Irish tax resident. George is an architect and he moved to Dublin for more lucrative work opportunities. However, he intends to return to London when suitable work opportunities arise there for his bespoke type of architecture. In 2013, George incorporated an Irish trading company, GH Architects Ltd. (GHAL), through which he has offered his bespoke architect services to date. He owns 100% of the shares in GHAL and has been a full-time working director for the company since it was incorporated. Up until now, all sales to Irish based clients have been invoiced by GHAL, which is VAT registered in Ireland. A rate of 23% VAT is applied to all sales invoices. As GHAL's financial statements were filed late with the Companies Registration Office for the last two years, GHAL's financial statements must be audited.

George has one daughter, Charlotte, who is 27 years old and lives in London. She is UK resident and domiciled. Charlotte has recently approached her father to lend her £400,000 to help her with the deposit needed to buy an apartment in London. George has £400,000 worth of savings held in a UK bank account and he intends to gift this to Charlotte next week to help her secure her first home in London.

As a result of gifting £400,000 of his UK savings to his daughter, George is hoping to extract €100,000 from his Irish company to purchase a new jeep personally. GHAL has a statement of financial position value of €500,000 with €350,000 of this value held in cash. George does not see any issue with him taking a loan of €100,000 from the company and he says that he will repay this when he moves back to London at some point in the future.

George recently incorporated a UK company. In 2017, he decided that he would begin looking for some work in the London area which would be conducted through this UK company. George's UK company is not yet VAT registered in the UK as he has not reached the £85,000 turnover threshold which currently applies. Two of George's closest friends who live in London have decided to seek planning permission to build holiday houses in Dingle, Co. Kerry. They have asked George to quote for the contract to design the houses and organise the Kerry County Council planning application. George has decided to quote for the Dingle jobs via his UK company, as he will not have to charge VAT.

REQUIREMENT:

(a) Appraise George of the implications for GH Architects Ltd. (GHAL) and for himself, where GHAL makes a loan to him of €100,000.

(9 marks)

(b) Advise George whether capital acquisitions tax (CAT) should apply to the gift of £400,000 to Charlotte. You should also provide tax planning advice to George regarding the scope of CAT and how it applies to his circumstances.

(6 marks)

(c) Assess the Irish VAT implications of George's UK company undertaking the design and planning application for two holiday houses located in Dingle, Co. Kerry.

(5 marks)

[Total: 20 marks]

END OF PAPER

SUGGESTED SOLUTIONS

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - AUGUST 2017

TAX REPORT
TO: **Tom Donohue**
FROM: **CPA**
RE: **Tax Advice**
DATE: **August 2017**

Presentation (1)

(a) Income tax and capital gains tax (CGT) of sale of business

Income tax
The income tax cessation rules will apply. That is, in the year of cessation, the profits liable to tax will be those profits from 1 January to the date of cessation. You will be required to carry out a penultimate year review for income tax purposes. If the profits for the penultimate year, as assessed on an actual basis, are higher than the profits originally assessed, your assessment for the penultimate year will be revised in line with the higher actual profits.

1

Balancing allowance/charge calculations will be required in respect of any assets upon which capital allowances have been claimed. The information you provided in respect of assets upon which capital allowances have been claimed is summarised below:

	Market Value €	**Tax Written Down Value €**
Fixtures & fittings	25,000	65,000
Plant & machinery	45,000	35,000

From the information provided by you, it appears that there may be an overall balancing allowance of €40,000 due in respect of the fixtures & fittings (i.e. €25,000 - €65,000). However, any such balancing allowance calculation must be carried out on an asset by asset basis.

As the market value of the plant & machinery appears to be higher than the tax written down value, a balancing charge may occur in respect of this asset category. However, any such calculations should be carried out on an asset by asset basis and it should be remembered that a balancing charge is limited to the capital allowances previously claimed on that asset.

1

CGT
Tom will be subject to CGT on the sale of his business. Tom may be entitled to retirement relief on the sale of his business. He may also be entitled to entrepreneur relief. Tom is selling his business for €850,000. The market value for his assets is €650,000. Therefore, the goodwill which Tom is selling is valued at €200,000.

Retirement relief
A number of conditions must be met for retirement relief to be available:
- Tom must be aged 55 years or over – condition satisfied
- Tom must be disposing of relevant business assets – condition satisfied as relevant business assets include sole trade business assets including goodwill
- Tom has held the assets for 10 years
- Tom is disposing of his business to a third party. He therefore needs to consider the €750,000/€500,000 thresholds for retirement relief. If Tom disposes of his business before he is 66 the relief only applies to disposals generating proceeds not exceeding €750,000. This limit of €750,000 is reduced to €500,000 for persons aged 66 years or older.

Retirement relief should be available to Tom. However, the key planning point that he needs to consider is that he should make the sale before he reaches the age of 66. The price increase that he expects to achieve as a result of waiting for the financials for the year ending 31 March 2018 would need to be substantial to offset the potential CGT liability as a result of retirement relief not being available.

2

Entrepreneur relief
Finance Act 2015 introduced a new 20% CGT rate for gains realised by entrepreneurs on disposal of certain business assets. The relief is capped at a lifetime limit of €1 million of chargeable gains and applies to disposals made on or after 1 January 2016. The 20% CGT rate applies to an individual who disposes of "chargeable business assets" and that individual is a "relevant individual" or "qualifying person".

Chargeable business assets include:

- assets including goodwill used for the purposes of a qualifying business carried on by the individual – Tom's pub business fits into this category; or
- ordinary shares in a qualifying company carrying on a qualifying business, provided that the individual selling the shares owned 5% or more of the ordinary share capital in the company being sold.

A relevant individual is a person who has beneficially owned the chargeable business assets for a continuous period of not less than three years in the five years immediately before the disposal of the assets. Tom is a relevant individual as he has held the pub business since 1984.

A qualifying person is an individual who:

- has been a director or employee of the company; and
- who was required to spend 50% or more of their working time in that company in a managerial or technical capacity and has done so for a continuous period of not less than three years in the five years immediately before the disposal of the 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.

As Tom is selling his pub business, it should be considered as a qualifying business for the purpose of entrepreneur relief.

2

CGT under normal principles

Pub building	€	€	
Proceeds		450,000	
Less cost	(50,000)		
Indexation	2.003	(100,150)	
Less enhancement	(70,000)		
Indexation	1.331	(93,170)	
Gain		256,680	2
Goodwill			
Proceeds		200,000	
Less cost		0	
Gain		200,000	1

Fixtures & fittings and plant & machinery
No gain.

No allowable loss either as capital allowances claimed and loss will be reduced to no gain no loss position. 1

Inventory and trade receivables
Not chargeable assets for CGT purposes.

Therefore, overall gain (before annual exemption)	456,680	
Less annual exemption	(1,270)	
Taxable gain	455,410	
CGT at 20% Entrepreneur relief	91,082	1

Retirement relief - transfer before 66

Qualifying assets for retirement relief:

	Market Value €		
Goodwill	200,000		
Pub building	450,000		
Fixtures & fittings	25,000		
Plant & machinery	45,000		
	720,000	Full retirement relief available as proceeds less than €750,000	
		No CGT due	1

Retirement relief - transfer after 66th birthday

Qualifying assets for retirement relief:

	Market Value €
Goodwill	200,000
Pub building	450,000
Fixtures & fittings	25,000
Plant & machinery	45,000
	720,000

As disposal proceeds/MV exceed €500,000, full retirement relief is not available

Marginal relief calculation 720,000 less 500,000 =	220,000	
50% of excess =	110,000	
		1
Gain under normal CGT principles	91,082	
Therefore, best to not claim marginal relief. CGT liability if transfer after 66th birthday	91,082	1

VAT

As you are disposing of business assets on which you have claimed a VAT input credit, VAT on the sale of such assets needs to be considered. However, you should note that where the following conditions are satisfied, no VAT will be charged on the sale of assets as "transfer of business relief ". (S20(2)(c) & 26 of the VATA 2010) applies:

1. the purchaser is a VAT-registered person, and
2. is entitled to claim a full (i.e. 100% recovery) input credit for any VAT charged to it, and
3. the transfer must constitute an undertaking or part of an undertaking capable of being operated on an independent basis.

It is therefore important that the purchaser is registered for VAT (or in the process of registering) before the sale takes place.

2

17

(b) Revenue audit

As you have already received correspondence from Irish Revenue regarding the issue of the valuation used for CAT and stamp duty purposes, then you can only make a prompted voluntary disclosure now.

1

A prompted qualifying disclosure must be made in writing, it must be signed by or on behalf of the taxpayer and it must include:

1. A declaration that all matters contained in the disclosure are correct and complete
2. A payment of the tax and interest
3. A full explanation in relation to the amounts previously undisclosed and a computation for the amount of tax due.

2

The benefits of making a prompted qualifying disclosure include non-publication, non-prosecution and mitigation of penalties.

1

It is likely that Revenue will classify the underpayment of CAT and stamp duty as either careless behaviour or deliberate behaviour.

1

Where the default is classified as deliberate behaviour, the level of penalty can be reduced to 50% where you make a prompted qualifying disclosure and cooperate with Revenue.

1

In respect of the careless behaviour category, where the tax shortfall is less than 15% of the tax ultimately due, the default category is 'careless behaviour without significant consequence' which carries a penalty of 10%. Otherwise, the default category will be 'careless behaviour with significant consequences' which carries a penalty of 20%).

1

CAT due	€17,787 (€55,000 - (€1,100 x 33%)
CAT paid	€9,900
Shortfall	€7,887

As the shortfall is greater than 15% of the CAT ultimately due - default category will be careless behaviour with significant consequences. Likely penalty of 20%.

1

Stamp duty due	€1,100 (€55,000 x 2%)
Stamp duty paid	€ 600 (€30,000 x 2%)
Shortfall	€ 500

As the shortfall is greater than 15% of the stamp duty ultimately due - default category will be careless behaviour with significant consequences. Likely penalty of 20%.

1

In addition, you need to be aware of Section 53 CATCA 2003 which provides that, where an accountable person (such as you) submits a return and the estimate of the market value of an asset included in the return is less than 67% of Revenue's market valuation of that asset, a surcharge will be applied. The net effect is that Revenue will review what the valuation should be and, if the taxpayer's return shows a figure which is less than 67% of that, then a surcharge must be paid. The extent of the surcharge varies with the extent of the undervaluation. Based on the €30,000 valuation included in your original return versus the professional valuation of €55,000, it appears that the market value used by you is only 55% of the professional market valuation (i.e. €30,000/€55,000). Therefore, the likely surcharge is 10% as the undervaluation falls in the category of 'equal to or greater than 50% but less than 67%".

3

From a stamp duty perspective, you have also underdeclared your liability due to your undervaluation of the market value of the property. A fixed penalty of €3,000 applies for failure to file a correct return under section 8A SDCA 1999. Interest will also be charged on the underpayment of stamp duty at a rate of 0.0219% per day. You have paid stamp duty of €600 whereas you should have paid €1,100 (€55,000 x 2%), therefore the amount of the underpayment is €500 and interest will apply to this amount.

3

15

(c) VAT on property advice

You should not have incurred any VAT on the purchase of the green field site in 2007. 1

However, you have developed this site by constructing a residential property on it and therefore the VAT legislation states that the 2 and 5 year rules do not apply in situations where a residential house is supplied by the person who developed it in the course of a property development business and the person who developed the property was entitled to recover VAT incurred on acquiring or developing the property.

2

As you have been suffering VAT clawback as a result of letting the residential premises, this means that you recovered VAT on the construction of the residential premises.

1

Therefore, VAT must be charged on the sale of the property and the €550,000 price will be VAT inclusive. The VAT attaching to the sale will be €65,419 (€550,000 - €550,000/1.135).

2

From a CGT point of view, it is therefore the case that the disposal proceeds, for the purpose of the CGT computation, will be €484,581 (€550,000-€65,419). Tom is therefore likely to make a CGT loss on the disposal of the house.

2

8

SOLUTION 2

MEMO
To: Self
From: CPA
Date: 31 August 2017
Re: Employment queries – TCIL & TCRL
R&D query - TCRL

(a) Giselle Beauchamp

The Special Assignee Relief Programme (SARP) will provide some income tax relief for Giselle. The SARP provides income tax relief on a proportion of the income earned by a relevant employee who, having worked with a relevant employer for a minimum period of 12 months, is assigned by the employer to work in Ireland.

1

Giselle will only receive income tax relief on the income as a result of SARP. It is not exempt from the Universal Social Charge or PRSI.

1

A relevant employer means a company that is incorporated and tax resident in a country with which Ireland has a double taxation agreement or a tax information exchange agreement. Therefore, TCI qualifies as a relevant employer.

1

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

- was a full time employee of a relevant employer and exercised the duties of her employment with that relevant employer outside Ireland for the whole of the 12 months immediately prior to arrival in Ireland – Giselle fulfils this condition as she has worked for the American parent company for 3 years.
- perform the duties of her employment in Ireland for a relevant employer – Giselle fulfils this condition and
- was not tax resident in Ireland for the 5 tax years immediately preceding the tax year in which she first arrives in Ireland – Giselle will not be tax resident in Ireland in 2017 or previous tax years.

1

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

- be resident in Ireland for tax purposes and not resident elsewhere – Giselle will be resident in Ireland in 2018
- perform the duties of his/her employment with a relevant employer (or associated company) in Ireland – She will perform her duties for TCIL in Ireland
  and
- have relevant income from her relevant employer which is not less than €75,000 excluding all bonuses, commissions or other similar payments, benefits, or share based remuneration.

1

Giselle will not be Irish resident in 2017. She will become Irish resident in 2018. In 2018 she will be Irish tax resident. In 2018 she will be paid €500,000 salary plus €125,000 bonus plus BIKs of €42,000. Therefore, Giselle's relevant income for SARP will be €667,000.

1

As this is greater than €75,000, she can claim a refund of PAYE on the "specified amount" which is determined as follows:

A = €667,000

B = €75,000 (as Giselle will spend all of 2018 working in Ireland)

Specified amount = €177,600 i.e. (€667,000 – €75,000) × 30%

Giselle will be entitled to an income tax repayment of €71,040 (€177,600 × 40%). 2

8

(b) Martha Mullen

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

2

FED is available if an employee has worked at least 40 “qualifying days” in a tax year. A “qualifying day” in relation to an employment of an individual means one of at least three consecutive days of presence in a relevant State (i.e. Brazil) for the purpose of the performance of the duties of the employment and which (taken as a whole) are substantially devoted to the performance of such duties. Martha fulfils this requirement as she worked 80 days in Brazil in 2017.

2

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

As Martha has spent more than 40 qualifying days (she spent 80 days) in relevant states (which includes Brazil) she satisfies the requirements for FED. Her specified amount is calculated as follows:

Specified amount = D × E / F where

D = 80 (“qualifying days” in year of assessment)
E = €130,000 (€150,000 - €20,000 BIK)
F = 365 days (Her employment was for all of 2017)

Martha’s specified amount for 2017 = 80 × 130,000/365 = €28,493 1
Martha’s tax saving as a result of FED is €28,493 x 40% = €11,397. 1

6

(c) Techno Computers Reaseach Ltd. will be due a credit of €280,000 as a result of R&D expenditure in 2016, see Working (i). It will carry forward €10,000 unused R&D credits from 2016, see Working (ii).

Working (i)

YE 31.12.16 - R&D revenue expenditure tax credit due

	€	**€**	
Machinery cost	140,000		
Salaries	180,000		
	320,000		
R&D tax credit - 25%		80,000	1

YE 31.12.16 - R&D building credit due

	€	**€**	
Spend on building	1,500,000		
Less site	(500,000)		
	1,000,000		1
80% used for R&D	800,000		1
R&D tax credit - 25%		200,000	1
Total R&D credit due		**280,000**	

Working (ii)

Corporation tax	**YE 31.12.15**	**YE 31.12.16**	
CT before R&D credit	40,000	230,000	
Less R&D CY claim		(230,000)	
Less R&D PY claim	(40,000)		
CT liability	0	0	
CT refund due for YE 31.12.15		40,000	1
Unused R&D credits carried forward		10,000	1
			6

SOLUTION 3

FILE NOTE – FOR THE FILE OF DENIS JOHNSTONE
Date: 28 AUGUST 2017
Re: Implementation of a holding company and benefits of same for future sale

(a) Implementation of a holding company structure

To implement a holding company structure, Denis will incorporate a new company called, Johnstone Holdings Limited (JHL). JHL is to be set up with the intention that it will become the new "group" holding company. JHL will be owned 100% by Denis. JHL will ultimately be the 100% shareholder in JGL and JLL. 2

Reorganisation Relief for tax purposes is available to allow for the implementation of a holding company structure tax free as follows:

1. Denis should transfer his 100% shareholding in JGL and his 100% shareholding in JLL to the new holding company, JHL, in exchange for JHL issuing 100% of its shares to Denis. That is, in equal proportion to the original 100% holding he had in JGL and JLL.
2. After this transfer, JHL, as the acquiring company, will own 100% of JGL and JLL. 2

There is a potential CGT exposure on the transfer of shares from Denis to JHL. As JGL is currently valued at €1,500,000 and Denis has a base cost of €100, he has a potential CGT liability of almost €495,000. Similarly, Denis has a potential CGT exposure on the transfer of his shares in JLL to JHL of almost €198,000. 1

Section 586 TCA 1997, provides for CGT relief on the transfer of shares in JGL and JLL by Denis. The CGT relief is available where the following conditions are satisfied:

1. the acquiring company (JHL), as a result of the exchange, has taken a controlling interest in the target companies (JGL and JLL); and
2. the amalgamation is carried out for bona fide commercial reasons and does not form part of a scheme or arrangement the principal purpose of which is the avoidance of tax. 3

From a stamp duty perspective, JHL could be exposed to stamp duty at a rate of 1% on the market value of the shares in JGL and JLL. That is, stamp duty of €21,000 ((€1,500,000+€600,000)x1%). 2

Section 80 SDCA 1999 provides for stamp duty relief where the following conditions are met:

1. the scheme of reconstruction/amalgamation must be undertaken for bona fide commercial reasons and must not involve tax avoidance as one of its principal objects.
2. the acquiring company, JHL, must obtain at least 90% of the issued share capital of the target companies, JGL and JLL – JHL has acquired 100% f each company.
3. The consideration for the acquisition, excluding liabilities of the target company taken over, must be paid by way of at least 90% in the issue of new shares in the acquiring company (JHL) to the shareholders of the target companies (JGL and JLL) – all consideration is in the form of shares in JHL.
4. The acquiring company (JHL) must issue shares to the shareholders of the target companies (JGL and JLL) in proportion to their shareholdings in the target companies.
5. The acquiring company must be a limited company and must be Irish or EU registered – JHL will be Irish incorporated.

If the relationship between JHL and its subsidiaries, JGL and JLL, is broken within two years of the transfer, the stamp duty relief will be clawed back. 3

13

(b) Transfer of site from JGL to JLL

Under normal rules JGL would be exposed to CGT on a gain of €250,000 on the disposal of the site. 1

However, after the holding company structure is implemented a CGT group will be established as JHL, the principal company, owns 75% or more in JGL and JLL. Therefore, for tax purposes, the transfer of the site will be deemed to be at no gain no loss for JGL. JLL will take on JGL original acquisition cost and date of acquisition of the asset. 2

There will be a clawback of the CGT relief if within 10 years there is a break in the group relationship between the company holding the asset (JLL) and the transferor company (JGL). 1

Stamp duty at a rate of 2% would normally be payable on the transfer of a site i.e. €300,000 x 2% = €6,000. However, under s79 SDCA 1999, where two companies are involved in the transfer are 90% related, an exemption from stamp duty can be claimed. As JGL and JLL are both 100% subsidiaries of JHL, this stamp duty exemption should be available. The stamp duty relief is subject to a clawback if the two companies cease to be associated within 2 years.

2

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

7

SOLUTION 4

(a) As Jack is a minor (under the age of 18), under the law he cannot hold title to property. Trustees will have to be appointed for the purpose of legally holding the house for Jack until he reaches 18. As Sally is 19, she can take direct ownership of her house immediately.

1

CGT needs to be considered for Clodagh on the transfers and CAT and stamp duty need to be considered for Jack and Sally.

Potential CGT for Clodagh

	€	€	
Deemed proceeds (market value)		150,000	
Less			
Base cost	140,000		
Stamp duty	1,400		
Legal fees	2,500		
		(143,900)	1.5
Gain		6,100	
Less annual exemption		(1,270)	0.5
Gain after annual exemption		4,830	
CGT		1,594	
CGT in relation to each house		797	1

Potential stamp duty for Jack and Sally

Market value of residential property	75,000	
Stamp duty liability each	750	1

Potential CAT for Jack and Sally

Deemed market value	75,000	
Less stamp duty and SGE	(3,750)	
	71,250	1
Less Group B	(30,150)	1
	41,100	
CAT at 33%	13,563	
Less CGT/CAT offset	(797)	1
CAT liability due each	12,766	
		8

(b) Clodagh will need to establish a discretionary trust (DT). 1

CGT for Clodagh needs to be considered on the creation of the DT. However, Clodagh will not incur any CGT as a result of principal private residence relief.

1

The base cost of the house to the trust will be €300,000. That is the current market value of the asset at the date it is transferred to the trust.

A stamp duty liability will arise for the trust on the transfer of the house to the trust. The rate of stamp duty will be €3,000 (€300,000 x 1%). The trust will have to have the funds to pay this stamp duty liability.

1

No CAT will arise for James on the creation of the trust. CAT will only arise when the property is appointed to James from the trust.

1

The trust will be subject to CGT on the uplift in value of the house from the date the property was transferred to the trust (€300,000) and the market value of the property at the date it is appointed to James.

1

The trust will be subject to income tax on the rental profits relating to the house. The rate of income tax will be 20%. Trustees are not entitled to claim the personal credit, allowances, exemptions, or reliefs from income tax that are available to individuals. Trustees are not subject to PRSI or USC in relation to trust Income. *If income in the trust is not distributed within 18 months, it will be subject to a surcharge of 20%.

1

The 6% and annual 1% DT tax also needs to be considered. DT tax will not be an issue while Clodagh is alive.

1

If the trust remains in operation after Clodagh (the settlor) has died, there may be a further deferral of the DT tax charges if James has not reached the age of 21.

1

The 6% discretionary trust tax charge arises on the latest of the following dates:

1. the date the trust is set up;
2. the date the settlor dies; and
3. the date the youngest of the settlor's children (who are potential beneficiaries under the trust or children of a child of the disponer where such child predeceased the disponer) reaches 21 years of age.

1

Half of the initial 6% charge will be refunded if all of the property of the discretionary trust is appointed within 5 years from the date on which the original 6% charge was triggered.

1

The annual 1% charge is payable if there is property in the discretionary trust on 31 December each year. It is payable on the value of the property in the trust on that date. The 1% annual charge is not payable on the first 31 December immediately following the date on which the initial 6% charge is payable.

1

CAT and CGT need to be considered when assets are appointed to the beneficiary from the trust (as discussed above). No stamp duty should arise on the appointment of asset to a beneficiary.

1

12

SOLUTION 5

(a) George needs to be aware of the significant legislation in respect of loans to shareholders. Company law prohibits loans in excess of 10% of the company's net assets.

George intends to take a loan from his company to the value of €100,000. His statement of financial position value is €500,000. The amount of the loan is therefore more than 10% of the net asset value of the company which equates to €50,000 (i.e. €500,000 x 10% = €50,000). As the loan will exceed €50,000 level, the shareholder's loan will be illegal and GHAL auditors will have to report George to the Director of Corporate Enforcement. This is a serious offence which George should avoid.

2

GHAL is a close company as it is controlled by George. Therefore, the close company tax legislation must be considered. Where a close company such as GHAL makes a loan to a shareholder, it must also make a withholding tax payment to the Revenue Commissioners. The loan will be treated as being a net annual payment, and subject to a re-grossing adjustment. The payment due to the Revenue is 20/80ths of the loan. That is, €25,000. Revenue will refund this withholding tax when the loan is repaid by George.

2

Under certain circumstances the withholding tax does not need to be paid by the close company. However, the loan to George does not meet the exemption conditions as he owns more than 5% of the ordinary share capital and the loan amount exceeds €19,050.

1

Benefit in kind (BIK) rates apply to benefits given by a close company to its employees. If GHAL provides George with an interest-free loan of €100,000 then this would constitute a BIK. The tax/PRSI/USC on such a BIK should be collected through the payroll of GHAL.

2

The deemed interest rates are 4% for a loan related to a principal private residence and 13.5% in all other cases. Therefore, the annual BIK for George in respect of the €100,000 loan will be €13,500.

2
9

(b) George is a UK domiciled individual. Charlotte appears to be UK resident and domiciled. George intends to gift £400,000 cash which is held in a UK bank account to Charlotte.

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

1. the disponer (George) is resident or ordinarily resident in Ireland at the date of the disposition; or
2. the beneficiary is resident or ordinarily resident in Ireland at the date of the gift – Charlotte appears to be UK resident; or
3. the assets which are the subject of the gift are Irish assets - £400,000 located in UK savings account is not an Irish asset.

2

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

1

George became Irish tax resident in 2013. 2017 will be his fifth year of Irish tax residence. Therefore, if he transfers the £400,000 to Charlotte in 2017, the gift should not be subject to CAT.

2

However, if he waits until 2018 to make the gift or if he remains tax resident in Ireland in 2018, he will have been resident in Ireland for the previous five years and therefore his worldwide estate will be within the scope of CAT.

1
6

(c) George is proposing that his UK non-VAT registered trading company will invoice his UK clients for the carrying out of architectural services relating to Irish property.

The normal business to consumer rules do not apply to services relating to immovable goods such as land and buildings. 2

Therefore, the place of supply of services directly connected with immovable goods, such as George's UK company's architectural services, will be deemed to be supplied where the property is situated (i.e. Ireland). 2

Therefore, Irish VAT at 23% will apply to the supply. 1

5