ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - APRIL 2015

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. A mark of 50 or more is required to achieve a pass in this 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. Helen Barrett and her husband, Austin, each own 2,000 €1 ordinary shares (i.e. 50% each) in Dental Database Ltd. (DDL). DDL is an Irish resident company which specialises in the selling of practice management software to dental and orthodontic practices throughout Europe. DDL was recently valued at €3,950,000.

DDL has a wholly owned subsidiary called Computer Software Solutions Ltd. (CSS). CSS is an Irish resident company carrying on a business of actively managing and exploiting the group's software intellectual property.

During 2013, CSS incurred expenditure on a patent of €505,000. CSS borrowed €150,000 to fund the expenditure on the patent and paid €12,000 in interest for the accounts year ended 31 December 2014. The company has a policy of amortising intangible assets over a 10-year period. The profits before interest of CSS for the accounts year ended 31 December 2014 were €110,000. These profits comprise €66,000 relating to the management of its intellectual property and €44,000 relating to other trading operations.

Helen and Austin are continuously looking for ways to expand their business. In 2013, they identified a company which they would like DDL to acquire called Medical Practice Solutions Ltd. (MPS). The shares in MPS have been owned by four members of the Griffin family since 2004, the date of incorporation of the company. A valuation of €2,300,000 has been placed on MPS. It has share capital of 2,000 ordinary shares at €1 each.

DDL has made an offer to the shareholders of MPS of €10 cash for each share they hold in MPS and 1 ordinary share in DDL in exchange for every share they currently own in MPS. If the offer is accepted by the four shareholders of MPS, it is estimated that the market value of DDL after the acquisition of MPS will be €6,000,000.

A lengthy due diligence process has taken place in advance of the above offer being put on the table by Helen and Austin. The main area of concern which was identified as a result of the due diligence process was in respect of benefits provided by MPS. The due diligence report provided to Helen and Austin outlines the following areas of concern. The tax implications of all the following benefits have not been addressed by MPS:

- In 2010, MPS made an interest-free loan of €14,000 to Edel, the wife of a 10% shareholder, Edel is neither a director nor an employee of the company. In 2014, MPS forgave this loan.

- On 1 July 2013, MPS advanced a car loan of €15,000 to a full-time employee called Shirley. Shirley does not own any shares in MPS. MPS is charging an interest rate of 1% on the loan.

- For the past 4 years, MPS has paid annual income protection premiums of €3,500 for Clodagh, a 15% shareholder who is a director of the company.

Within days of agreeing the form of the takeover of MPS, the Finance Director of MPS rang Helen to inform her that she had received a Revenue audit notification letter for MPS. The Revenue letter states that the impending audit will cover all tax heads for the 2013 and 2014 accounting periods. Helen has contacted you for advice.

REQUIREMENT:

Draft a report to Helen advising her of the following:

(a) The corporation tax liability for Computer Software Solutions Ltd. for the accounting period ended 31 December 2014, assuming that the patent purchased in 2013 is a qualifying "specified intangible asset" in accordance with section 291A TCA 1997.

(7 marks)

(b) The tax implications for Medical Practice Solutions Ltd. of the contents of the due diligence report.

(9 marks)

(c) The steps which Medical Practice Solutions Ltd. should take in respect of the Revenue audit letter which has been received. [Note that no detailed interest and penalty calculations are required].

(7 marks)

(d) The tax implications for the Griffin family and Dental Database Ltd. of the proposed takeover clearly outlining any tax reliefs available. You should assume that Helen and Austin have agreed that they will cover the tax advice costs for the Griffin family shareholders if they agree to the takeover bid.

(15 marks)

Format and Presentation (2 marks)

[Total: 40 marks]

2. As a newly qualified Certified Public Accountant working in an accountancy practice in Galway, you met with Michael (37) and Natasha (35).

Michael and Natasha have been married for ten years and have two children. Until recently, they have lived permanently in London since they got married. Michael was originally born in Ireland. His mother, father and siblings still remain in Ireland. Michael has informed you that he intends to return to Ireland permanently to retire someday. Natasha met Michael in Dublin in 2000 while they were studying at University. Natasha was born in the UK. Her parents live in London. Until now, the only time that Natasha has spent living outside the UK, were the four years she spent studying in Dublin.

Michael is employed by a UK bank, Quantum Bank (UK) plc. He worked in the internal audit section for seven years and, as a result of his expertise, was seconded to Ireland for three years on 1 February 2014. He is to head up the internal audit department in Quantum Bank Ireland Ltd, a 100% Irish subsidiary of Quantum Bank (UK) plc. Michael received confirmation from his UK accountant and tax adviser that he would not be deemed resident in the UK in 2014 for tax purposes.

Although Michael will work predominantly in Ireland, he will be expected to spend two days per month in the UK to carry out duties incidental to those he performs for Quantum Bank Ireland Ltd. Throughout his three-year secondment, he will continue to be employed and paid by Quantum Bank (UK) Plc in the UK. His gross annual salary is €235,000 and this is lodged into his UK bank account. Quantum Bank (UK) Plc have confirmed that they will operate Irish PAYE on his salary while he is seconded to Ireland.

Michael has a residential rental property in Brighton. This is let out annually for €12,000 (gross) per year. Michael has a mortgage on the property with mortgage interest of €8,000 payable each year. The rent is lodged directly to a UK bank account specifically set aside for the UK property. Michael has always returned this rental income to the UK tax authorities.

Natasha and the children did not move to Ireland until 15 August 2014. They will not return to the UK until the end of Michael's secondment. Before moving to Ireland, Natasha worked as a graphic designer for a software company. In the tax year that she moved to Ireland, she had earned €55,000 while working in London. When Natasha told her employers that she was moving to Ireland for three years they immediately advertised her position. Unfortunately, they have not yet found her replacement and have asked her to continue to work for them for 18 months after her move to Ireland. Her employers have confirmed that they will operate Irish PAYE on her salary while she is living and working in Ireland. In 2014, they paid her €65,000 after her move to Ireland. Natasha also receives UK dividends each year. These are paid into her UK bank savings account from which she does not withdraw any money.

REQUIREMENT:

You should assume that the 2014 tax rates apply throughout.

(a) Michael has heard some of his work colleagues in Ireland say that they are entitled to tax relief in Ireland under the Special Assignment Relief Program (SARP). Michael would like you to provide some details on this program and advise whether it can apply to him. No calculations are required.

(8 marks)

(b) Michael's employer has offered to pay his childrens' Irish school fees (€3,000 per year per child) for the duration of the secondment. Michael would like to know if he is required to pay income tax on this benefit.

(2 marks)

(c) Advise Michael on his Irish income tax exposure in 2014, 2015 and 2016. (5 marks)

(d) Advise Natasha on her Irish income tax exposure in 2014, 2015 and 2016. (5 marks)

[Total: 20 marks]

3. You have just had a meeting with your manager, Jonathan. During this meeting you were briefed about a client who is looking for succession planning advice. Your notes from the meeting are outlined below. You have now got until this afternoon to put together a briefing memo for Jonathan as he has a call scheduled with the client, Maura O'Neill, at 4pm.

- Maura will turn 66 years old on 31 December 2015.
- She is a widow with 3 children: Fiona (17), Barry (22) and Christopher (27).
- Maura owns 60% of an Irish software trading company, Digi Age Ireland Ltd (DAIL). There are two other shareholders in the company. The shareholders in DAIL are not related.
- Maura and her two friends incorporated the company in the early 1990s after completing their degrees in computing. Maura paid €60 for her shares. All shareholders have worked for the company since its incorporation.
- Maura is currently the Financial Director (FD) of DAIL. She has held this position and been on the board of directors for the past 12 years. As the company has grown quite rapidly in the last 5-10 years, Maura has been required to work full-time for the past 7 years.
- Christopher has worked full time in DAIL since the age of 24. Fiona is in her first year of University and Barry has just commenced doctorate studies in the UK.
- Maura, Fiona and Christopher are Irish resident. Barry is UK resident.
- Fiona, Barry and Christopher all received a legacy of €25,000 each from their late father in 2010. In addition, Fiona was gifted a house valued at €150,000 from Maura's sister in 2012.
- In 1988 Maura inherited, from her father, the office premises from which DAIL trades. In 1988, the office was valued at €19,000. Today, it is worth approximately €350,000.
- A private equity firm recently offered €7,000,000 for 100% of the shares in DAIL. Maura rejected this offer on the basis that she wishes to transfer her shares to her children. The other shareholders did not wish to sell out at this point either.
- Maura would like to retire at the age of 66. She plans to work on a part-time basis as a non-executive director when she retires from her capacity as FD.
- Maura's intention is that she will immediately gift 40% of the company and the office building to Christopher and 10% of the company to Barry. If these transfers are acceptable from a tax perspective, then Maura plans to sign the transfer documents and stock transfer forms in her solicitor's Dublin office within a week. When Fiona turns 19, Maura intends to transfer her final 10% shareholding in the company to her at that point.

REQUIREMENT:

Draft a briefing note to Jonathan, your manager, evaluating the tax implications for Maura and her children of the proposed transfer of her shares in Digi Age Ireland Ltd. You should also include any tax planning advice in your briefing note.

[Total: 20 marks]

4.

(a) Brian (56) and Ellen (44) are married with one son, Sean (22). They are all Irish resident and domiciled.

Brian's father died in 2011. In his will he left the majority of his estate to Brian and his brothers. However, as Brian and Ellen's son was his first grandchild, he left assets worth €2,500,000 in a discretionary trust for Sean. Brian and Ellen are the trustees. Sean has never received any previous gifts or inheritances.

Breakdown of assets left in discretionary trust with Sean as the beneficiary:

Cash	€750,000
Farm land	€500,000
Commercial property	€1,250,000

In their capacity as trustees and in line with Brian's Father's letter of wishes, Brian and Ellen used some of the €750,000 cash to buy a residential property in Dublin for €620,000 (inclusive of stamp duty and legal fees). The other €130,000 remained on deposit, with Sean receiving capital distributions of €10,000 in 2011, €10,000 in 2012 and €10,000 in 2013.

In 2014, Brian and Ellen decided that Sean is now mature enough to hold the assets. Listed below, are the assets of the trust immediately before distribution to Sean (in 2014). Brian and Ellen engaged a professional valuer to provide a market value for the land and property.

Farm land	€400,000
Commercial property	€1,500,000
Residential property	€800,000
Cash	€120,000

REQUIREMENT:

Advise of the tax implications for the trustees and for Sean in respect of the distribution of the trust assets to Sean in 2014.

(7 marks)

(b) The trustees will use the cash to discharge any liabilities of the trust. Any balance remaining will then be distributed to Sean.

In addition to being trustee for his son's trust, Brian established a trust in 2014 for the benefit of his niece and nephew who are both Irish resident and in their late twenties. Their father, John (Brian's brother), was killed in a car accident in 2013. The trustees are Brian's two surviving brothers, both of whom live in Ireland. Brian transferred cash of €1 million into the trust and directed the trustees to invest the money as they see fit and to transfer the trust assets to the beneficiaries by the age of 40 at the latest. The trustees used some of the money to purchase shares in Irish quoted companies. The remainder was lodged to Irish deposit accounts. The trust was in receipt of dividend income of €50,000 and gross deposit interest of €30,000 in 2014. The trust also sold shares in 2014, realising a gain of €75,000. The trust distributed €5,000 to Brian's niece and €5,000 to Brian's nephew in 2014. The trustees paid €3,500 to the trust solicitor and accountant in 2014 in respect of managing the trust affairs. The trustees do not intend to make any further distributions for the next 3 years.

REQUIREMENT:

(i) Assess the Irish tax issues arising in 2014 for Brian, the trustees, and Brian's niece and nephew as a result the existence of the trust.

(9 marks)

(ii) Advise of the tax implications for the trust and for Brian's niece and nephew if Brian were to die on 1 June 2015, with the trust assets valued at €1,300,000.

(4 marks)

[Total: 20 Marks]

5. You are Mal Kelly. As a newly qualified Certified Public Accountant in your office, two of your colleagues have sent you VAT queries which they would like your advice on.

(a) Jennifer, has sent you the following email:

Dear Mal,

I have a client named Paddy McCauley. His financial year end is 31 December. He is a long-standing client of the practice and during the boom years he built and sold many housing developments and commercial properties. His operations have scaled back substantially. He is now in severe financial difficulty.

Please see the following:

(i) Paddy constructed an apartment block in Santry, Dublin. Only three of the apartments remain unsold. The apartments were completed in September 2008. Paddy recovered €28,000 of VAT in respect of the construction of each apartment. Each apartment now has a market value of €100,000. Does Paddy need to charge VAT on the sale of the apartments?

(ii) Paddy bought a commercial unit in Navan in the 1990's. During 2013, he did renovation work to the commercial unit at a cost of €150,000 plus VAT. The renovation work was completed in November 2013. Unfortunately, Paddy has never been able to secure any tenants for the property and he currently has the property listed for sale at a price of €200,000, as this is what a similar commercial unit sold for recently. Does Paddy need to charge VAT on the sale of the commercial building?

(iii) Paddy constructed a house in Dublin in 2009. The house cost €1,200,000 plus VAT (all at 13.5%) to construct and Paddy recovered all this VAT, as he intended to sell the property. The development of the house was completed on 9 December 2009. Unfortunately, Paddy has not been able to find any buyers to date. He has decided to rent out the house to a couple for three years at a rent of €3,500 per month from 1 May 2015. Can you advise on the VAT position in respect of the rental income and explain the capital goods scheme implications for Paddy? Please also advise on the VAT treatment if Paddy sells the house for €1,200,000 at the end of the lease period?

I look forward to receiving your advice on (i) to (iii) above. If you require any further information please do not hesitate to contact me.

Best regards
Jennifer

REQUIREMENT:

Draft a memo to Jennifer advising her of the VAT implications of the transactions outlined in her email to you.

(13 marks)

(b) Matthew, the partner of the practice, has asked you to draft a memo for him, outlining the VAT position for his clients, Swirl Holdings Ltd. (SWL) and FG Swirl Ltd. (FGS). SWL has eight Irish wholly owned subsidiaries in addition to FGS and they all form a VAT group. SWL is the group remitter. SWL owns a commercial property upon which it recovered 100% of the VAT charged on the purchase price. The property was purchased from an individual who had used it as her business premises. She originally bought the property from a developer in September 2008. Since December 2009, the date that SWL acquired the property, the property was let and VAT was charged by SWL on the lettings. SWL's tenants moved out in December 2013 and despite advertising the property for rent, SWL cannot obtain suitable tenants for the building and has decided to transfer it to FGS. It is intended that FGS will use it as a storage facility. 20% of FGS' sales are VAT exempt.

REQUIREMENT:

Draft a memo to Matthew, discussing the VAT treatment of the transfer of the commercial building from Swirl Holdings Ltd. to FG Swirl Ltd.

(7 marks)

[Total: 20 marks]

END OF PAPER

SUGGESTED SOLUTIONS

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND

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PROFESSIONAL 2 EXAMINATION - APRIL 2015

SOLUTION 1

STRICTLY PRIVATE AND CONFIDENTIAL

Tax Report for Helen Barrett

The following report contains tax advice in respect of:

Section A Corporation tax liability for Computer Software Solutions Ltd for the accounting period ended 31 December 2014

Section B The tax implications for Medical Practice Solutions Ltd of the contents of the due diligence report

Section C Medical Practice Solutions Ltd's options in respect of the Revenue audit letter

Section D Tax implications for the Griffin family and Dental Database Ltd of the proposed takeover

Presentation (2)

Section A Corporation tax liability for Computer Software Solutions Ltd for the accounting period ended 31 December 2014

Corporation tax liability for CSS Ltd for the year ended 31 December 2014

Before calculating the corporation tax for CSS, the availability of capital allowances in accordance with section 291A TCA 1997 needs to be considered.

The amount of the allowance available for tax purposes in respect of the cost of a "specified intangible asset" such as a patent will normally follow the accounting treatment in respect of intangible assets. That is, the tax relief will be in line with the amortisation policy.

A company also has an option to spread the expenditure over a 15 year period (7% in years 1-14 and 2% in year 15). As CSS's amortisation policy is spread over a shorter period it is unlikely that the company has made the election to spread the cost over 15 years.

(1 Mark)

A restriction must be applied to the amount of capital allowances available. The legislation states that the aggregate of the allowances and any related interest incurred on the acquisition of the patent cannot exceed 80% of the company's income from relevant activities. Relevant activities include the managing, developing and exploiting of intangible assets.

(1 Mark)

Steps to work out company's corporation tax:

1. Identify the income from the relevant trade - €66,000

2. Calculate the relief available for YE31 December 2014 –

Capital allowances = €505,000 x 10%	€50,500
Related interest	€12,000
Total claim	€62,500

3. Calculate the restriction

Income from relevant trade	€66,000
Maximum claim €66,000 x 80%	€52,800
Deduction for related interest	€12,000
Capital allowances restricted	€40,800

4. Identify excess capital allowances

Capital allowances	€50,500
Utilised in YE 31 December 2014	€40,800
Excess available to carry forward	€9,700

(3 Marks)

Corporation tax calculation

Income from relevant trade	€66,000
Interest allowable	€12,000
Restricted capital allowances	€40,800
Taxable relevant trading income	€13,200
Taxable other trading income	€44,000
Taxable income	€57,200
Corporation tax at 12.5%	€7,150

(2 Marks)

Section B The tax implications for Medical Practice Solutions Ltd of the contents of the due diligence report

- Loan to Edel

  Back in 2010, the loan to Edel should have been treated as an annual payment under deduction of standard rate of income tax. Income tax of €3,500 (€14,000 x 20/80) should have been paid by MPS in respect of the loan.

  A benefit in kind ("BIK") charge should not arise on the basis that Edel is not an employee of MPS.

  Upon forgiveness of the loan in 2014, the income tax of €3,500 is not recoverable by MPS from Revenue.

  The grossed up amount of the loan, i.e. €17,500 (€14,000 x 100/80), is assessed on Edel for income tax purposes. Edel will be entitled to a credit for the income tax suffered by MPS of €3,500.

  The write-off of the loan is not deductible against MPS's Case I trading profits. (3 Marks)

- Loan to Shirley

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

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

  A BIK under Schedule E should arise during the period the loan is outstanding if the interest rate on the loan (i.e. 1%) is less than the "preferential loan" rates of 4% for a qualifying home loan and 13.5% for any other loan.

  The tax exposure of Shirley's loan is that she should have paid tax on deemed extra salary of €938 (€15,000 x 12.5% x 6/12) in 2013 and €1,800 for 2014. Extra PAYE, PRSI and USC are due on these amounts.

(3 Marks)

- Income protection premium for Clodagh

  As Clodagh is a director of MPS, the payment by MPS of an income protection premium on her behalf, will be treated as a tax deductible expense for the company.

  Clodagh will be subject to income tax on the benefit.

  As MPS have not addressed the BIK implications of this payment for the past 4 years, the PAYE, PRSI and USC are underpaid in respect of Clodagh. For the past 4 years, she should have paid marginal rate income tax, PRSI and USC on €3,500 per year. Employer's PRSI should have also been paid in respect of this benefit each year.

(3 Marks)

Section C Medical Practice Solutions Ltd's options in respect of the Revenue audit letter

As a result of the due diligence process, it has already been established that MPS has underpaid income tax in respect of a deemed annual payment and the taxes associated with BIKs for a director and an employee have not been operated correctly.

In particular, the Revenue audit issues identified to date include:

- Loan to Edel in 2010 - €3,500 of income tax should have been paid to Revenue. As the loan was written-off in 2014, this amount remains outstanding.
- Loan to Shirley in 2013 – PAYE, PRSI and USC underpaid in 2013 (on €900 deemed extra salary) and 2014 (on €1,800 extra salary).
- Income protection payments for Clodagh – PAYE, PRSI and USC underpaid for the past 4 years in respect of a deemed BIK for Clodagh of €3,500 per year.

(1 Mark)

As a letter of audit has been issued and received by MPS, the opportunity for the company to make an unprompted qualifying disclosure is not available.

(1 Mark)

The company can however make a prompted qualifying disclosure. (1 Mark)

MPS can contact Revenue and ask for a sixty day extension in order to make the voluntary disclosure. (1 Mark)

The benefits of making a full prompted qualifying disclosure are: non-publication; Revenue assurances for non-prosecution and penalty mitigation. These are set out in the 2010 Code of Practice for Revenue Audits. In terms of the penalty which MPS may incur, where MPS cooperate with Revenue in respect of the audit and where a prompted qualifying disclosure is made, the penalties may be:

- 10% for careless behaviour
- 20% for careless behaviour with significant consequences is 20%
- 50% for deliberate behaviour. (1 Mark)

Any prompted disclosure made by MPS, must state the amounts of all previously undisclosed liabilities to tax and interest within the scope of the audit. Therefore, a full review of all tax heads should be undertaken to ensure all undisclosed liabilities are included.

(1 Mark)

The essential elements of a qualifying disclosure are:

- The disclosure must be in writing and signed by a director of the company
- The tax, duty and interest owed must be paid on submission of the disclosure (i.e. a cheque on the day of the audit or a ROS payment)
- A full explanation and particulars of the chargeable amount must be included, along with a statement of the amount of tax due for each period.

The qualifying disclosure need not state the amount of penalties due. Revenue will agree a penalty on the day of the audit or alternatively at the conclusion of the audit.

(1 Mark)

Section D Tax implications of the proposed takeover

The proposed format of the takeover is an example of a 'share for share' exchange. (1 Mark)

There are various taxes and reliefs to be considered for the acquiring company (DDL) and the target company (MPS).

The Griffin family, the shareholders in MPS before the takeover, are exchanging their shares in MPS for shares in DDL plus some consideration.

(1 Mark)

After the takeover, MPS will be a subsidiary of DDL and the 4 Griffin family members will no longer own shares in MPS, they will own shares in DDL.

(1 Mark)

CGT needs to be considered for the Griffin family members who were shareholders in MPS. (1 Mark)

Section 586 TCA 1997 outlines a CGT relief for the shareholders of a company amalgamation by exchange of shares.

(1 Mark)

In order for section 586 TCA 1997 CGT relief to be available to the shareholders of MPS, the following conditions must be satisfied:

1. The acquiring company (DDL) must gain control of the target company (MPS).

2. The amalgamation must be effected for bona fide commercial reasons and should not form part of any arrangement/scheme the main purpose of which is the avoidance of tax.

(2 Marks)

As the conditions of section 586 TCA 1997 are fulfilled, the Griffin family members are not treated as having made a disposal of their shares in MPS for CGT purposes. However, as the shareholders in MPS are exchanging their original shares in MPS for the issuance of shares in DDL plus consideration, there is a deemed part disposal for a consideration equal to the cash received. The new shares in DDL take on the original cost and acquisition date of the old shares in MPS less the amount allocated to the part disposal.

(2 Marks)

The CGT exposure on the deemed part disposal in respect of each ordinary share in MPS is calculated as follows:

Base cost of ordinary share capital in MPS (€1 x 2,000 shares) €2,000

Number of ordinary shares to be issued in DDL to MPS shareholders = 2,000 shares
Bring the total number of shares in DDL after the transaction to 6,000.

Cash proceeds for MPS shares (€10 x 2,000 shares) €20,000

MV of DDL shares issued to MPS shareholders (€6m x 2,000/(2,000+4,000) €2m

Deemed part disposal = €2,000 x €20,000/(€20,000+€2m) = €20

Therefore, the potential CGT exposure for all shares in MPS =	€20,000
Less base cost allocation per part disposal formula	(€20)
Capital gain	€19,980
Capital gain per share (€19,980/2,000 shares)	€9.99

(Reasonable attempt at calculation - 2 Marks)

Stamp duty needs to be considered for DDL in respect of the acquisition of the entire shareholding of MPS.

Stamp duty relief under section 80 SDCA 1999, will apply to the transfer of shares in MPS to DDL provided certain conditions are met. The level of stamp duty relief is 1% of the value of the shares in MPS.

(1 Mark)

The following conditions must be fulfilled to enable DDL to avail of section 80 stamp duty relief:

1. The amalgamation must be undertaken for bona fide commercial reasons and must not involve tax avoidance.

2. DDL, the acquiring company, must obtain at least 90% of the issued share capital of MPS – this condition is satisfied.

3. The consideration for the acquisition must be paid by at least 90% in the issuance of new shares in DDL to the shareholders of MPS – only €20,000 of the proceeds relates to cash therefore, this condition is satisfied.

4. DDL must issue shares in itself to the shareholders of MPS in proportion to their shareholdings in MPS – this condition is satisfied.

All of the above conditions are satisfied and therefore no stamp duty is payable on the amalgamation.

A clawback of section 80 stamp duty relief will arise if DDL does not retain ownership of MPS for two years. (3 Marks)

SOLUTION 2

(a) Special Assignment Relief Program (SARP)

Finance Act 2012 provided for a new SARP.

In summary, the new SARP will exempt 30 per cent of income between €75,000 and €500,000 from income tax for employees who are assigned to work in the Ireland for a minimum period of 12 months, by companies located in countries with which Ireland has a double taxation treaty, to work in the Irish-based operations of their employer.

The relief will be available for a maximum period of 5 years.

Application of the relief

The relief will apply where a "relevant employee":

	Application of condition to Michael	**Condition satisfied**
is resident in the State for tax purposes and not resident elsewhere	In 2014 and for the duration of the secondment, Michael will be resident in Ireland. We are told that his UK tax adviser has told him that he is not UK resident in 2014.	Yes
performs in the State the duties of his or her employment with a 'relevant employer' or 'associated company'	Michael is going to be working for Quantum Bank Ireland Ltd, an Irish subsidiary of Quantum Bank (UK) Plc.	Yes
has 'relevant income' from the 'relevant employer' or 'associated company' of not less than €75,000, and,	Annual salary of €235,000.	Yes
while so exercising those duties continues to be paid 'relevant emoluments' by his relevant employer or associated company. A relevant employee is an individual who:	Will be paid by Quantum Bank UK Plc	Yes
was a full time employee of a relevant employer for the entire of the 12 months immediately prior to arrival in the State and exercised the duties of that employment outside the State;	Michael worked in the internal audit section for 7 years.	Yes
arrives in the State in 2012, 2013 or 2014 at the request of the relevant employer to either perform duties in the State for that employer or take up employment in the State with an associated company;	Seconded on 1 Feb 2014.	Yes
performs the duties of that employment in the State for a minimum period of 12 months from the date he or she takes up residence in the State;	Seconded for three years.	Yes
was not resident in the State for the 5 tax years immediately prior to arriving in the State to take up employment.	Resident in UK up to 2013.	Yes

(2 Marks)

The legislation also provides that in assessing whether the duties of employment are performed in the State (for the purposes of the 12 month requirement) any duties performed outside the State and which are incidental to the duties performed in the State, will be viewed as performed in Ireland where they do not exceed 30 days in a tax year – as Michael only spends 24 days per year in the uk carrying out incidental duties of his Irish secondment.

(1 Mark)

Quantum Bank (UK) Plc would be regarded as a relevant employer as it is a company incorporated and tax resident in a country with which Ireland has a double tax treaty i.e. the UK.

(1 Mark)

Quantum Bank Ireland Ltd is an associated company of Quantum Bank (UK) Plc as it is a wholly owned subsidiary.

Michael's relevant income for the purpose of the relief will be his base salary of €235,000. (1 Mark)

The relief is granted by permitting a deduction for the 'specified amount' against the employment income. This deduction will then result in a repayment of income tax at the marginal rate.

The specified amount is defined as the result of the following formula:
(A – B) × 30%

Where:
A = the lower of (1) the amount of income, profits or gains from the employment with the relevant employer or associated company, as reduced by any employee or personal pension contributions (and excluding any reimbursement of deductible expenses) and (2) €500,000 (the upper threshold).

B = €75,000 (lower threshold) (1 Mark)

Where an employee performs duties in the State for a period not covering a full tax year, the upper threshold, the lower threshold and the 'relevant income' levels are reduced proportionately – this will apply to Michael in 2014 only.

(1 Mark)

Therefore, in conclusion, Michael should be entitled to SARP for 2014, 2015 and 2016. (1 Mark)

(b) Under SARP, employees who qualify for the relief are entitled to receive, or receive reimbursement for, the cost of a return trip to their country of residence or nationality for them and their families, tax free. In addition, up to €5,000 in school fees for each child of the employee paid to a school in the State (but not outside the State) can be paid or reimbursed tax free.

As Michael's employer has offered to pay his children's Dublin school fees (€3,000 per year per child) for the duration of the secondment. This will not be a benefit in Kind and will be free from tax.

(2 Marks)

(c) Tax implications for Michael - tax years 2014, 2015 and 2016

Michael will spend more than 183 days in Ireland in 2014 - he will be Irish resident in that tax year. (1 Mark)

However, he will not be ordinarily resident until he has been resident for three consecutive tax years.

Based on the facts given, Michael appears to be Irish domiciled. Michael is not entitled to claim the remittance basis of taxation as he is domiciled in Ireland.

(1 Mark)

Therefore, for the tax years 2014 to 2016 (inclusive), Michael will be Irish domiciled and resident but not ordinarily resident.

In respect of his employment income, Michael can claim split year relief in respect of the employment income earned by him prior to his arrival in the tax year 2014 i.e. it is not assessable to tax in Ireland.

(1 Mark)

His employment income from date of arrival will be assessable to Irish income tax. (1 Mark)

In respect of his rental income, Michael will be subject to Irish tax on the net rental profits. Under the UK/Ireland double taxation agreement, the UK will retain first taxing rights as the property is located there. Ireland will then give credit in respect of the UK tax paid up to the Irish effective rate. Michael should note that he will only be entitled to a deduction of 75% in respect of the mortgage interest.

(1 Mark)

(d) Tax implications for Natasha – tax years 2014, 2015 and 2016

Natasha came to Ireland on 15 August 2014. She therefore will not be Irish tax resident in 2014.

Natasha does not appear to be Irish domiciled. She is UK domiciled.

Like Michael, Natasha will not be ordinary resident in Ireland until she is resident for the three preceding tax years. This will be 2018 for Natasha although they do not plan to be in Ireland beyond Michael's three year secondment.

For 2014, even though Natasha in non-resident in 2014, she will be subject to Irish PAYE on her Irish employment income of €65,000.

(1 Mark)

Her UK employment earnings of €55,000 will not be subject to Irish tax in 2014. (1 Mark)

In respect of her 2014 dividend income, she will not be subject to Irish tax on this regardless of whether she remits it to Ireland or not.

(1 Mark)

For the 2015 and 2016 tax years, Natasha will be an Irish resident, non-ordinarily resident and non-domiciled individual. She will be assessable on her Irish source income (inclusive of foreign employment income to the extent the duties are exercised in the State) as well as foreign income remitted to the Ireland.

Therefore, she will continue to be subject to Irish PAYE on her Irish employment income through 2015 and 2016.

In respect of UK dividends which she receives, based on the information given, Natasha does not appear to be remitting tis income into Ireland and therefore, she will not be subject to income tax on it.

(2 Marks)

SOLUTION 3

Briefing Memo

To: Johnathan

From: New CPA

Re: Maura O'Neill – succession planning

A number of taxes need to be considered:

- Capital gains tax (CGT) for Maura
- Capital acquisitions tax (CAT) and stamp duty (SD) for the three children.

Market value rules will be imposed from a CGT, CAT and SD perspective as the disposals are by way of a gift. Therefore, based on the recent offer of €7,000,000 for the company, Maura's 60% shareholding is worth €4,200,000 and the office building is worth €350,000.

(2 Marks)

It is also worth noting that Barry, regardless of his UK residency, will be subject to Irish CAT. This is because the disponer, Maura, is Irish resident. In addition, stamp duty will be payable where the transfer documents are signed in Ireland.

(1 Mark)

- CGT for Maura

  Maura will be chargeable to CGT on the transfer of the shares to her children. The availability of retirement relief to Maura must be considered.

  Maura intends to transfer 60% (worth €4,200,000) of the shares in DAIL and the office building immediately, when she is 65. She intends to transfer her final 10% shareholding to Fiona in 2 years' time.

  The conditions for retirement relief which must be fulfilled are:

  - The individual making the disposal must have attained 55 years of age – YES
  - The shares must have been held for ten years by the individual ending with the disposal. For full relief all of the capital assets of the company must be trade assets – YES
  - The shares must be held in a "family company".
    - A family company is defined in section 598 (1) (a) TCA 1997 as a company where the individual must hold (a) at least 25% of the voting rights or (b) at least 10% of the voting rights where the family own 75% of the voting rights. – YES
  - The individual must have been a working director for at least 10 years and a full time working director for at least five of those years. – YES
  - The company must be a trading company – YES

  (2 Marks)

  In respect of the immediate transfer of the shares to Christopher and Barry, as you can see, all the above conditions are satisfied.

  In addition, the transfer of shares to Christopher and Barry now, when she is aged 65, will mean that such transfers should not be subject to the €3,000,000 cap set out in Section 599(1)(b)(iii) Taxes Consolidation Act 1997.

  (1 Mark)

  In respect of the transfer of the office building which is being gifted to Christopher, the availability of retirement relief needs to be considered. With effect from 1 January 2002, a taxpayer claiming retirement relief in respect of the disposal of shares in a family company may also claim the relief in respect of land and buildings which the individual has owned for a period of at least 10 years ending on the date of the disposal provided that:

  (i) The taxpayer is a controlling shareholder – Maura owned 60% therefore she was a controlling shareholder
  (ii) the assets were used by the company throughout the taxpayer's period of ownership – this condition is satisfied, and
  (iii) the assets are disposed of at the same time and to the same person as the shares in the family company – Christopher is getting a 40% shareholding in addition to the office building.

  Therefore, retirement relief should be available on the disposal of the office premises as well. (2 Marks)

  It should be noted that Christopher and Barry would need to hold onto their assets for a period of 6 years to avoid any clawback issue.

In respect of the future transfer of her 10% shareholding to Fiona (valued at €700,000), Maura will not be entitled to retirement relief as she will not be able to fulfil the family company requirement (she now only holds 10% and her family only own 60%). Therefore, there exists significant CGT exposure in respect of the transfer of shares to Fiona in a few years' time. (€700,000-€10-€1,270=€698,720 x 33% = €230,578)

(2 Marks)

ADVICE – if Maura transfers her 10% shareholding to Fiona at the same time as her transfer to Christopher and Barry, she should be able to avail of retirement relief and hence have no CGT to pay.

(1 Mark)

- CAT for the 3 children

The current rate of CAT is 33% but the potential for the children to obtain business relief needs to be explored.

The following conditions must be satisfied for business relief to apply. In respect of Christopher, Barry and Fiona, they each must satisfy one of the following conditions after taking into account the shares which are gifted:

1. He/she must control more than 25% of the voting rights;
2. The company is, after taking the gift, under the control (i.e. more than 50%) of the recipient and his/her relatives or
3. He must control at least 10% or more of the aggregate nominal value of all issued shares and securities of the company and has worked full time in the company or the group throughout the period of 5 years ending on the date of the benefit.

In addition, in order for business relief to apply, Maura must have held the shares for a minimum of 5 years prior to the gift. As Maura has held her shares since the 1990s, this condition is satisfied.

The shares must also be "relevant business property". Relevant business property includes unquoted shares of a company carrying on a business. The company must be a trading company. DAIL fulfils all these requirements.

(1 Mark)

As Christopher is being gifted a 40% shareholding, he will qualify under pt. 1 above. (1 Mark)

Both Barry and Fiona will be inheriting a 10% shareholding each. They both should qualify under pt. 2 above as between them and Christopher, they control the company.

(1 Mark)

In respect of the transfer of the office building to Christopher, business relief can apply to the transfer of a building which immediately before the gift was used wholly or mainly for the purpose of a business carried on by a company controlled by the disponer. In addition, the disponer must also simultaneously transfer shares in the company which qualify for business relief. Maura, the disponer, did control DAIL before the gifts and Christopher was gifted shares in conjunction with the office building which was used for the company's trade. CAT relief can therefore apply.

(2 Marks)

CAT calculations

Christopher	**€**
Market value of gift	
Shares	2,800,000
Office building	350,000
	3,150,000
Less business relief	(2,835,000)
	315,000
Less annual gift exemption	(3,000)
	312,000
Less remaining group A threshold	(200,000)
Amount subject to CAT at 33%	112,000
CAT due	36,960

Barry & Fiona	**€**
Market value of gift	
Shares	700,000
Less business relief	(630,000)
	70,000
Less annual gift exemption	(3,000)
	67,000
Less remaining group A threshold	(67,000)
Amount subject to CAT at 33%	0
CAT due	0

(3 Marks)

- Stamp duty
  Christopher, Barry and Fiona will each be liable to 1% stamp duty in respect of the transfer of shares to them. As noted above, market value rules will apply for stamp duty purposes.

  In respect of the transfer of the commercial property, 2% stamp duty will be payable by Christopher. (1 Mark)

[Total: 20 Marks]

SOLUTION 4

(a) The trustees will need to consider their CGT position and Sean will have a CAT exposure on the distribution of assets from the trust.

No stamp duty will arise on the appointment of assets from the trust to Sean. (1 Mark)

Trustees - CGT
The trustees will be subject to CGT as follows:

	Base cost €	**Market value €**
Farm	500,000	400,000
Commercial property	1,250,000	1,500,000
Residential property	620,000	800,000
TOTAL	2,370,000	2,700,000

The trustees can offset any capital loss, such as the €100,000 loss on the farm, on the appointment of assets from the trust against gains arising on the appointment.

The trustees will have to pay CGT of €330,000 x 33% = €108,900.

There is no CGT on cash. The cash balance in the trust will have to be used to pay the CGT liability due.

(3 Marks)

Sean - CAT
Sean will be subject to CAT on the appointment of assets from the trust. He will be entitled to a group B threshold of €30,150.

Value of inheritance

	Market value €
Cash balance €120,000-€108,900	11,100
Farm	400,000
Commercial property	1,500,000
Residential property	800,000
TOTAL	2,711,100
Current benefit	2,711,100
Previous benefits	30,000
Aggregated benefits	2,741,100
Less group B	(30,150)
Net taxable benefit	2,710,950
Taxed at 33%	894,614
CGT/CAT offset	(108,900)
CAT liability	785,714

Sean must hold assets for 2 years or the CGT/CAT same event credit will be clawed back. (3 Marks)

(b)
(i) Give the level of discretion given to the trustees, it can be concluded that Brian has established a discretionary trust for his niece and nephew.

Brian
The transfer of the cash into the discretionary trust would not result in a CGT liability for Brian. (1 Marks)

Trustees
Income tax
For income tax purposes the trust would be liable to Irish income tax on all income. The trustees would therefore be liable to Irish income tax on the Irish deposit interest and on dividends from Irish resident companies. Income tax is payable at a rate of 20% and the trustees have no entitlement to personal credits and allowances. Therefore, the income tax liability in 2014 will be €50,000+€30,000 = €80,000 x 20% = €16,000
(1 Marks)

A 20% surcharge will arise in relation to the Irish deposit interest and dividend income to the extent that it is not distributed by the trustees within 18 months of the end of the tax year. The trustees do not intend to make any further distributions in the next few years therefore, the only distributed income to be taken into consideration is the €10,000 (€5,000 x 2) which was distributed in 2014.

(1 Mark)

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

(1 Mark)

	€	
Gross income	80,000	
Deduct income tax payable by trustees	(16,000)	
	64,000	
Deduct management expenses	(3,500)	
	60,500	
Deduct income distributed	(10,000)	
Undistributed income	50,500	
Re-gross at 20% 50,500 x 100/80	63,125	
Surcharge at 20%	12,625	(1 Mark)

CGT

The trustees would be liable to Irish CGT on the gain arising on the sale of the shares in 2014. They are not entitled to any annual exemption. The 2014 CGT liability will be €75,000 x 33% = €24,750

(1 Mark)

Discretionary trust tax

Discretionary trust tax is not applicable as Brian is still alive. (1 Mark)

Niece and nephew

The niece and nephew would not be liable to Irish CAT in 2014 as they did not become beneficially entitled to receive assets from the trust in 2014.

(1 Mark)

Stamp duty

No stamp duty on cash transferred to trust.

Trust will have to pay stamp duty on the acquisition of shares at 1%. (1 Mark)

(ii) If Brian dies, the 6% and 1% discretionary trust charges need to be considered in respect of the discretionary trust.

The charge to the 6% once-off discretionary trust tax is triggered by a deemed inheritance taken by the trust.

Where property is subject to a discretionary trust, the trust will be deemed to have taken an inheritance accordingly on the latest of the following dates:

(a) The date on which that property becomes or became subject to the discretionary trust;
(b) The date of death of the settlor; or
(c) The date the youngest of the settlor's children (who are potential beneficiaries under the trust) reaches 21 years of age.

(1 Mark)

In respect of the discretionary trust which Brian has established for his niece and nephew, the 6% charge will fall due on the date of Brian's death (assumed to be 1June 2015), it will be payable four months later.

The trustees of the discretionary trust are the persons primarily accountable for the payment of the 6% tax charge. If the trust assets are valued at €1,300,000 on 1 June 2015 then the €78,000 will fall due on 1 June 2015.

(1 Mark)

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

Therefore, in the event of Brian's death, the trust assets would need to be distributed before 1 June 2020 to enable 3% of €1,300,000 (that is, €39,000) to be recovered.

(1 Mark)

There is an annual 1% charge payable if there is property in a discretionary trust on 31 December each year. It is payable on the value of the property in the trust on 31 December. However, 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 Mark)

SOLUTION 5

(a) **MEMO**
TO: **Jennifer**
FROM: **Mal Kelly**
RE: **Paddy McCauley – VAT advice**

Santry apartments
Even though the apartments are 'old' from a VAT perspective as they have been completed more than 5 years, VAT at 13.5% must be charged on the Santry apartments.

(1 Mark)

The VAT legislation specifically states that VAT must be charged on the sale of residential units which were developed in the course of a property development business and where the property developer was entitled to deduct VAT on development.

(1 Mark)

This means that if the €100,000 sale price is inclusive of VAT, the VAT due to Revenue will be €11,894 and the net that Paddy will keep is €88106.

(1 Mark)

Commercial unit in Navan
Paddy must charge VAT on the sale of the commercial unit. (0.5 Marks)

The development work which was completed in November 2013 essentially makes the property 'new' for VAT purposes. This is because the development work cannot to classified as 'minor development'. That is, the development work exceeds 25% of the consideration for the supply of the property (€200,000 inclusive of VAT).

(2 Marks)

The property remains new as it has never been occupied and not enough time has elapsed since the development was complete.

Paddy's net proceeds after VAT (assuming he gets his asking price) is €176,211. (0.5 Marks)

Mansion house in Dublin
All leases are VAT exempt. (0.5 Marks)

The VAT legislation does not permit the option to tax to be exercised in respect of residential lettings.

(0.5 Marks)

Therefore, as the mansion will be used for an exempt purpose Paddy is obliged to make an adjustment in respect of the VAT claimed on the acquisition and development cost.

As Paddy developed the property and it is he who is renting it out, the full VAT clawback provisions do not apply.

(1 Mark)

Instead, Paddy is liable to pay back 1/20th of the VAT deducted on acquisition/development at the end of each capital goods scheme (CGS) interval for as long as the property is rented. That is, for three years in Paddy's case.

(1 Mark)

The CGS initial interval ran from 9 December 2009 to 8 December 2010.
The 2nd interval runs from 9 December 2010 to 31 December 2010.
The 3rd interval runs from 1 January 2011 to 31 December 2011.
The 4th interval runs from 1 January 2012 to 31 December 2012.
The 5th interval runs from 1 January 2013 to 31 December 2013.
The 6th interval runs from 1 January 2014 to 31 December 2014.
The 7th interval runs from 1 January 2015 to 31 December 2015.

(For discussion on intervals to show understanding: 2 Marks)

As the lease agreement commences on 1 May 2015, this falls in the 7th CGS interval. Paddy will therefore have to pay back VAT of €8,100 (€162,000/20) at the end of the 7th interval (31 December 2015), 8th interval (31 December 2016) and the 9th interval (31 December 2017).

(1 Mark)

When the property is eventually sold, it will be subject to VAT as normal. Therefore, where the property is sold for €1,200,000, Paddy will have to pay €142,731 VAT across to Revenue. Hence, his net proceeds will be €1,057,269.

(1 Mark)

(b) MEMO

TO: **Matthew**
FROM: **Mal Kelly**
RE: **VAT on group transfer of property**

Swirl Holdings Ltd (SWL) and FG Swirl Ltd (FGS) are both in a VAT group. SWL is transferring a property to FGS. Normally, where a VAT group exists, no VAT is charged on intra-group transactions. However, the transferring of property between VAT group members is excluded from the usual VAT group relief provisions.

(1 Mark)

The normal VAT on property provisions will apply as if SWL and FGS are not within a VAT group.

As SWL purchased the property on its second supply and due to the fact that the property was occupied for four years by SWL's tenants, it will no longer be considered 'new' for VAT.

(2 Marks)

However, SWL will wish to opt to tax the transfer so that it does not suffer a capital goods scheme adjustment.

(1 Mark)

Where the option to tax is exercised on the transfer, a VAT invoice must be raised by SWL (i.e. the company transferring the property).

(1 Mark)

FGS (i.e. the purchasing company) can secure an input credit in respect of the VAT charged on the purchase of the property. However, as FGS has only 80% VAT recovery, the input credit in the group VAT return will be 20% lower than the output VAT on sale.

There will therefore be a VAT cost associated with the transfer of the property. (1 Mark)

Based on the amounts involved, it should be considered if the VAT cost would be as high if SWL did not opt

(1 Mark)