CPA IRELAND | CERTIFIED PUBLIC ACCOUNTANTS

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - APRIL 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

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - APRIL 2017

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. You are a recently qualified Certified Public Accountant working in a practice in Galway. It is now 1 May 2017 and you have been asked to prepare a tax report by the partner of the practice. The brief for the report is to outline the tax implications and the tax planning opportunities for Charlie and Bridie Gallagher, long standing clients of the practice. Charlie and Bridie recently met with the partner of the practice. Notes from the meeting follow:

- Charlie (60) and Bridie (55) have been married for 35 years and have no children.
- Charlie was gifted a farm from his father 5 years ago on 15 February 2012. The gift included the following assets:

Market value at 15 February 2012

	€
Farm land	160,000
Farm buildings	120,000
Farm house	180,000
Farm machinery	45,000
Livestock	15,000
	520,000

At the time of the gift, Charlie did not qualify for agricultural relief as he had substantial cash investments. However, as a result of business relief being available on the relevant assets, Charlie did not pay any capital acquisitions tax at the time of the gift and only had €45,000 of his Group A threshold remaining after taking account of previous gifts and inheritances and after all relevant reliefs and exemptions were claimed. Charlie, with the help of a farm manager, has operated the farm as a profitable business since it was inherited.

Charlie would like to sell the farmland to his cousin, Shaun (33). In December 2016, Shaun had returned to live in Ireland having spent the previous five years living in Boston, USA. He plans to work full time on the farm for the foreseeable future and put into use the University agricultural degree he obtained before leaving Ireland in 2011. Shaun believes that with his skills, he will be able to make a reasonable living off the farm.

Shaun would like the transfers to be completed by 1 August 2017 at the latest. As a result of the impending sale, Charlie recently had the assets valued by a local auctioneer on 28 April 2017. The updated valuations for the assets to be sold to Shaun are:

Market value at 28 April 2017

	€
Farm land	240,000
Farm buildings	145,000
Farm house	240,000

Charlie intends to only charge Shaun 75% of these market values. Shaun is very grateful for this generosity as he has never received any previous gifts or inheritances in his lifetime. After paying for the purchase of the assets, Shaun's only other assets will be €75,000 cash and a car worth €5,000.

Charlie confirmed that he and Bridie have lived in the farm house from the date it was gifted to Charlie but they have now identified a bungalow in a new development which they intend to move to.

Bridie has a keen interest in property and over the years she has built up an impressive property portfolio.

Bridie regularly attends property auctions throughout Ireland. At a recent auction in Galway she had her eye on a 'distressed' commercial property which did not sell. Since the auction, she has regretted not putting in an offer of €330,000 plus VAT for the property as she now thinks that it would be a perfect property for her sister, a local GP, to rent on a 10 year lease. The property in question has been unoccupied for the past number of years and would require only minor repair work to get it ready for letting.

REQUIREMENT:

Draft a tax report for Charlie and Bridie Gallagher which outlines the following:

(a) The tax implications for Charlie of transferring the farm land, buildings and house to Shaun in August 2017. Your answer should include any tax planning advice regarding the timing of the transfer.

(12 marks)

(b) The tax implications and reliefs available to Shaun in respect of the transfer. Your answer should include the conditions for any appropriate reliefs.

(14 marks)

(c) VAT advice in respect of the property purchase which Bridie is considering. (12 marks)

Format and Presentation (2 marks)

[Total: 40 marks]

2. It is 28 April 2017 and you have just been briefed by your manager, Clive, regarding new clients of the practice, Evelyn and Paddy McHugh. Clive provides you with the following notes from a recent telephone call he has had with Evelyn:

- Evelyn is 41 years old. She was born in Birmingham, England and lived there all her life until her recent move to Ireland. Paddy was born in Ireland and although he has worked occasionally in England, he has always retained his Irish tax residence status.

- Evelyn's father and mother were both born in Donegal but due to the lack of work available in Ireland in the early 1960s they were forced to move to England. They were both 19 years old at the time of the move and like so many Irish emigrants in the 1960s, Evelyn's parents made Birmingham their home. By the time Evelyn's parents were in their mid-twenties, Evelyn and her twin brother were born in Birmingham. From the time they emigrated, her parents lived and worked in Birmingham and rarely returned to Ireland other than for brief holidays. Both Evelyn's parents have been laid to rest in Birmingham and the family home there is now owned jointly by Evelyn and her brother.

- In 2008 Evelyn married Paddy McHugh, a plumber from Dublin, who was working in Birmingham. They married in Birmingham but have since moved to Ireland.

- On 1 September 2016, Evelyn moved to Ireland for a minimum period of five years. She and Paddy have agreed that if she cannot settle in Ireland after five years, they will move back to the UK. Evelyn is a human resource (HR) specialist and she commenced employment with an Irish based HR company on 15 October 2016. Evelyn had been a self-employed HR consultant operating in the UK until 31 December 2015. She ceased her self-employment at the end of 2015 in anticipation of her move to Ireland.

- In 2015 Evelyn spent 132 days in Ireland and in 2016 she spent 150 days in Ireland. In each of the three years prior to 2015 Evelyn spent a maximum of 15 days in Ireland per year.

- In November 2016, Evelyn and Paddy bought a family home in Dublin for €675,000.

- The acquisition of the house was funded partly by a gift from Paddy's parents. They gifted €25,000 to Evelyn and €25,000 to Paddy in October 2016. This is the first gift that Paddy has ever received from his parents. The only previous gift or inheritance that Evelyn received was her half share (valued at €300,000) in the Birmingham family home when her father died.

- In 2016 Evelyn had the following income and gains:

Source of income/gains	**Amount**	**Notes**
Irish employment salary	€59,000	
UK Rental income	€19,000	This is Evelyn's share of the rental profits on her original family home in Birmingham which she now owns jointly with her brother. Rental income from this property is paid into her account in Bank of Birmingham. Evelyn has however set up a direct debit from this account to her Irish ABI account as the money is needed to help the repayments on their Irish home. UK income tax of €800 has been paid to UK HMRC in respect of this income.
UK dividends	€2,500	Evelyn has instructed that these dividends are paid directly into her Bank of UK savings account. She does not extract any money from this account.
December 2016 Evelyn sold a commercial investment property she owned in Birmingham	€450,000	She purchased the commercial investment property in 2008 for €209,000. The property was vacant from May 2015. Evelyn requested that her solicitor transfer all the proceeds to her Irish bank account.

REQUIREMENT:
Draft a memorandum to your manager Clive for his meeting with Evelyn and Paddy later this week. Your memo should include the following:

(a) Advice on Evelyn's domicile, tax residence and ordinary residence status for 2016 including an explanation for the conclusions you have reached.

(6 marks)

(b) An appraisal of Evelyn's income/gains which are within the charge to Irish income tax for 2016 including the reasons why particular sources of income/gains are, or are not, within the charge to Irish tax in 2016.

(7 marks)

(c) An assessment of, and advice regarding, the capital acquisitions tax implications of the cash gifts received in 2016 from Paddy's parents.

(7 marks)

[Total: 20 marks]

3. You are a recently qualified Certified Public Accountant and you have just had a meeting with Mary Harper. Mary is aged 59 and she is the 100% shareholder of Harper Lighting Specialists Ltd (HLSL). Mary and HLSL have both been a client on your list for the last few years and you are familiar with their tax and financial situation. Mary has devoted her life to building HLSL into the successful company that it is today. She has worked full time for the company for the past 12 years. When the company was incorporated in 2005, Mary subscribed 1,000 €1 ordinary shares. HLSL trades as a wholesaler of specialist lighting equipment throughout Ireland.

Mary personally owns the office building from which the company's sales and marketing department operates. The office building has been recently valued at €250,000 and Mary acquired this building in 2006 for €130,000. The building has always been used by the company.

Mary would like to transfer her 100% shareholding in HLSL to Justin, her son, before the end of 2017. Mary is unsure of whether she should transfer the office building to him now also or whether she should retain ownership of this for a few years. Justin is now 29 years old and he has never worked for HLSL.

Currently, the market value of 100% of the shares in HLSL is €3.2 million. The most recent draft statement of financial position is outlined below:

Harper Light Specialists Limited
Draft Statement of Financial Position as at 31 March 2017

	Note	**€**	**€**
ASSETS			
Non-Current Assets			
Property, plant & equipment	1	2,450,000	
Intangible assets	2	525,000	
			2,975,000
Current Assets			
Inventories		475,000	
Trade receivables		230,000	
Bank		106,000	
			811,000
Total Assets			**3,786,000**
EQUITY & LIABILITIES			
Share Capital & Reserves			
Issued share capital		1,000	
General reserve		379,000	
Retained earnings		2,820,000	
			3,200,000
Non-Current Liabilities			
Long term loan			376,000
Current Liabilities			
Trade payables			210,000
Total equity & liabilities			**3,786,000**

Notes:
1. Within 'Property, plant & equipment' is an investment property which HLSL purchased in 2009. The investment property currently has a market value of €550,000. All other assets are used for trading purposes and their net book value represents their market value.
2. The acquired goodwill fully relates to the trade.

REQUIREMENT:

Draft a file note outlining the tax considerations below regarding the transfers which Mary Harper is contemplating:

(a) Discuss the capital gains tax implications for Mary of the proposed transfer of shares and the building to Justin. Any tax planning advice regarding the timing of the transfers should be included in addition to the conditions to be satisfied for any reliefs.
(10 marks)

(b) Appraise the stamp duty and capital acquisitions tax implications for Justin of the proposed transfer of shares and the building to Justin. Any tax planning advice regarding the timing of the transfers should be included in addition to the conditions to be satisfied for any reliefs. (10 marks)

[Total: 20 marks]

4. As a qualified Certified Public Accountant, you have carried out the ongoing compliance for Incredible Solutions Ltd (ISL) for the past few years. You met with the Finance Director recently and he outlined the following two queries which he would like you to address for him.

Research & Development (R&D)
ISL has been carrying out qualifying R&D activities for the last five years. Even though ISL has always claimed the maximum R&D credit available, the company has paid corporation tax on its profit for the past five years. For the year ended 31 December 2015, ISL had R&D credits of €200,000 and a corporation tax liability of €127,000. However, in an attempt to retain a some of its key staff, ISL has decided to surrender up to €45,000 of its R&D credits for the year to some key employees.

Two employees have been identified by the Board of Directors as being crucial to the future success of ISL:

- Jennifer Clarke – Jennifer is the daughter of one of the majority shareholders in ISL. Jennifer works fulltime in the R&D department as a team leader in the software development section. She is not a director of the company. As a result of Jennifer's dedication to the company, her father gifted her a 10% shareholding in ISL in 2015. Jennifer's only income for the 2016 tax year was from ISL and her 2017 income position will be similar. Her P60 details for the 2016 and 2017 tax years are as follows:

2016	Gross pay	€80,000
	PAYE	€23,950
2017	Gross pay	€86,000 (estimated)
	PAYE	€26,350 (estimated)

- Michael Conlon – Michael is employed by ISL for nine years and he has always spent 60% of his time on the R&D activities of the company. He does not hold any shares in ISL nor is he a director of the company. His P60 details for the 2016 and 2017 (which is estimated) tax years are as follows:

2016	Gross pay	€75,000
	PAYE	€16,950
2017	Gross pay	€105,000 (estimated)
	PAYE	€29,100 (estimated)

Michael has no other sources of income.

Retirement of Managing Director
Gerry Kyle has worked as the managing director of ISL since 1 January 1997. He is planning to retire from the company on his 67th birthday on 14 September 2017. Gerry has taken a salary of €60,000 gross per annum for the last ten years and has also built up a sizeable occupational pension from which he will be entitled to draw a tax free lump sum of €80,000 on retirement. The Board of Directors has indicated that it would like to give Gerry €60,000 cash from the company on his retirement. In 2008, when the company had cash-flow difficulties, Gerry lent €30,000 to the company. As at 31 December 2016, this amount was included within the current liabilities section of ISL's statement of financial position as a director's loan.

REQUIREMENT:

(a) The Finance Director has requested tax advice on the amount of R&D credit surrendered by Incredible Solutions Ltd (ISL) that can be claimed by Jennifer and Michael. As the company plans to incentivise its key employees in furure with this relief, the Finance Director would also like to be provided with details of the conditions attaching to the relief. Set out the relevant advice that should be given to the Finance Director.

(12 marks)

(b) Advise the Finance Director on the most tax efficient way for Gerry Kyle, the Managing Director of ISL, to extract €60,000 from the company on his retirement on 14 September 2017.

(8 marks)

[Total: 20 Marks]

5. It is now 1 September 2017 and you have recently been engaged by Majella Lawlor to act as tax agent for her company Lawlor Pottery Limited (LPL) based in Sligo, Ireland. LPL manufactures and distributes bespoke hand crafted pottery to customers throughout the UK. The company was trading profitably up to 31 December 2015 and a summary of the recent results for LPL up to the year ended 31 December 2016 are as follows:

	Year ended 30 June 2015	**Period ended 31 December 2015**	**Year ended 31 December 2016**
	€	**€**	**€**
Trading profit - Case I	40,000	27,000	(160,000)
Rental profit - Case V	18,000	17,500	10,000

Majella prepared and filed the corporation tax returns for LPL up to 31 December 2015. However, she is unsure of how to deal with the losses that have been incurred in the year ended 31 December 2016. She has therefore requested that you review the tax computations and returns that she has filed for the last few years.

Upon review of the tax computation for the period ended 31 December 2015, you notice an error. It was noted that no adjustment was made to the net profit reported in the finacial account in respect of a €15,000 increase in the pension accrual at the period end.

In May 2017, Majella attended a trade fair in Dubai. At this fair, she met a number of wealthy potential customers for her pottery designs with an Arabic theme. Majella now views the United Arab Emirates (UAE) as a new profitable market which she intends to exploit. On the flight home from Dubai, Majella sat beside another Irish business women. After a discussion regarding the potential new direction of her business into the UAE market, the other business women informed Majella that she would be willing to sell, for €10,000, her 100% shareholding in an Irish incorporated company which has €150,000 trading losses carried forward. This company previously carried on the trade of selling ceramic cookware, however, due to increased competition in this market, the number of sales made by the company has almost ceased. The business acquaintance suggested that Majella buy the company shares and then start to trade with customers in the UAE market via this company so that no corporation tax will be due in Ireland on the first €150,000 of profits.

REQUIREMENT:

(a) Advise Majella on how she should deal with Irish Revenue in respect of the error that you have identified regarding the Case I trading profit included in the filed corporation tax return for the period ended 31 December 2015.

(5 marks)

(b) Majella would like advice on how the company should utilise the trading loss incurred in the year ended 31 December 2016. As cash-flow within the company is currently limited, she requires advice on how to get as much corporation tax refunded as possible and also how to ensure that no cash is needed for corporation tax before the end of 2017. She would like to know the maximum refund that LPL can expect to receive after taking account of any adjustments that may be required as a result of part a).

(9 marks)

(c) Advise Majella on whether you think that it is a good idea, from a tax perspective, that she pays €10,000 for the shares in an Irish company which has trade losses carried forward.

(6 marks)

[Total: 20 marks]

END OF PAPER

SUGGESTED SOLUTIONS

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - APRIL 2017

SOLUTION 1

TAX REPORT
TO: **Charlie and Bridie Gallagher**
FROM: **CPA**
RE: **Transfers to Shaun and VAT**
DATE: **May 2017**

Presentation (2 Marks)

Section A The tax implications for Charlie on the proposed transfer of the farm
The tax implications for Charlie of the proposed transfer of the farm house, farm land and farm buildings to Shaun include: a clawback of capital acquisitions tax (CAT) – business relief and capital gains tax (CGT) on the uplift in value of the assets from the date of the gift from his father to the date they are transferred to Shaun.
CAT – Business Relief claw back
Charlie claimed business relief on the original gift which he received from his father. However, the legislation states that business relief will be clawed back if, within six years commencing on the date of the gift:

- the assets cease to qualify as relevant business property or
- the business or any business that replaced it is sold unless the business/assets are replaced within one year by other relevant business property.

As Charlie was only gifted the assets on 15 February 2012 and he is proposing to sell the assets (at undervalue) on 1 August 2017, this is within the 6 year clawback period for business relief.

(1 Mark)

Where there is a clawback of business relief, the tax is re-calculated on the benefit as though the asset, on which the relief is to be clawed back, was not a business asset.

The only assets which would have qualified for CAT business relief were the farm land and farm buildings. The farm house would not have qualified for business relief.

(2 Marks)

Potential clawback of CAT business relief

	€	
Farm land	160,000	
Farm buildings	120,000	
	280,000	
Value included at in original CAT computation	28,000	
Value to be included due to clawback	280,000	
Excess	252,000	(1 Mark)
Amount of group A threshold remaining in 2012	(45,000)	
Excess to be taxed at 33%	207,000	(1 Mark)
Estimate of extra CAT due (ignoring stamp duty)	68,310	(1 Mark)

If Charlie waited until after 15 February 2018 to transfer the assets, no clawback of CAT business relief would apply. Perhaps this is something that he should discuss with Shaun.

(1 Mark)

CGT for Charlie
For CGT purposes, market value will be imposed. Charlie will be subject to CGT on the uplift in value of the assets from the date they were gifted to him, and the date he sells them.

CGT principle private residence relief will be available in respect of the transfer of the farm house.
(1 Mark)

Retirement relief will not be available to Charlie as he has not held the assets for 10 years.
(1 Mark)

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 goodwill used for the purposes of a qualifying business carried on by the individual – Charlie's farm business fits into this category.

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. Charlie has owned the farming assets for 5 years.

As Charlie is transferring his farming business, it should be considered as a qualifying business for the purpose of entrepreneur relief.
(2 Marks)

CGT for Charlie on transfers

	Market value at 15 February 2012	**Market value at 28 April 2017**	**Gain**	
	€	€	€	
Farm land	160,000	240,000	80,000	
Farm buildings	120,000	145,000	25,000	
Farm house	180,000	240,000	60,000	Covered by PPR
		€		
Gain subject to CGT		105,000		(1 Mark)
Less annual exemption		(1,270)		
		103,730		
CGT at 20% (entrepreneur relief)		20,746		

(12 Marks)

Section B - The tax implications for Shaun of the proposed transfer

CAT
For CAT purposes, market value will be imposed.

As there is a gift element to the transfer of the assets from Charlie to Shaun, CAT will need to be considered.

However, the availability of CAT agricultural relief should be considered on the gift element.

In order for Shaun to qualify for agricultural relief to apply, the following conditions must be satisfied:

1. the land must be "agricultural property" – agricultural property includes land, farm buildings and farm houses. Therefore, all assets transferring to Shaun qualify as agricultural property.
(1 Mark)

2. Shaun must be a "farmer" - at the date of the gift (i.e. the proposed valuation date of 1 August 2017), at least 80% of the market value of the assets of Shaun must be represented by agricultural property.

	Farmer test Total assets	Agricultural assets	Non-agricultural assets
Farm land	240,000	240,000	
Farm buildings	145,000	145,000	
Farm house	240,000	240,000	
Cash	75,000		75,000
Car	5,000		5,000
	705,000	625,000	80,000
Farmer test =	625,000 / 705,000	89%	

(2 Marks)

Therefore, the farmer test is satisfied.

3. Shaun must be an "active farmer".

To be an active farmer, Shaun must either:

1. hold a qualification in farm management and farm the land with a "view to the realisation of commercial profit" for a period of at least six years from the valuation date, and
2. for at least six years from the valuation date, spend at least 50% of their "normal working time" farming the agricultural property on a commercial basis.

As Shaun intends to work on the farm and as he has an agricultural degree, it appears that Shaun should fulfil the active farmer condition.

(1 Mark)

Where an individual initially qualifies as an "active farmer" but ceases to qualify within the subsequent six-year period, any agricultural relief previously claimed will be clawed back.

(1 Mark)

Gift element for Shaun

	Market value at 28 April 2017	80% of value	Gift element
Farm land	240,000	192,000	48,000
Farm buildings	145,000	116,000	29,000
Farm house	240,000	192,000	48,000
	625,000	500,000	125,000

CAT calculation for Shaun

Value of gift	125,000	(1 Mark)
Less AR	(112,500)	(1 Mark)
Value after AR	12,500	
Less annual exemption	(3,000)	(1 Mark)
Taxable value	9,500	
Less Group C	(15,075)	(1 Mark)
Amount subject to CAT	nil	

Stamp Duty

Shaun should be able to avail of full relief from stamp duty on a transfer of the farm as he will qualify as a "young trained farmer". This relief is available up to 31 December 2018. The relief covers farmland, farm houses and other farm buildings on the farmland.

(1 Mark)

The conditions that must be satisfied for the relief to be available include:

- The farmer must be less than 35 years of age on the date of execution of the deed of transfer – Shaun is currently 33.
- The farmer must have attained and agricultural degree or other relevant qualification – Shaun has a University degree.
- The farmer must furnish a declaration to the effect that he will, for a period of 5 years from the date of the execution of the deed of transfer:
- spend not less than 50% of his or her normal working time farming the land, and
- retain ownership of the land.

(3 Marks)

A clawback period of 5 years applies. (1 Mark)

(14 Marks)

Section C – VAT on property advice

As a GP, Bridie's sister is carrying on a VAT exempt business and so she has no ability to register or reclaim any VAT charged in respect of her services.

(3 Marks)

Under the VAT on property regime, lettings are exempt from VAT but, in certain circumstances, it is possible for the landlord to opt to tax the letting.

(2 Marks)

However, as Bridie and her sister are connected and as Bridie's sister (the proposed tenant) will not be entitled to at least 90% VAT recovery, it will not be possible for Bridie to opt to tax the letting.

(4 Marks)

Therefore, should Bridie buy the property for €330,000 plus VAT of €44,550 and reclaim this VAT, then she will suffer a clawback of €44,550 when she signs a 10 year lease with her sister.

(3 Marks)

(12 Marks)

SOLUTION 2
MEMO
To: Clive
From: CPA
Date: 28 April 2017
Re: Evelyn and Paddy McHugh

(a) Advice on Evelyn's domicile, tax residence and ordinary residence status for 2016 including an explanation for the conclusions you have reached.

"Domicile" is not defined in tax legislation. Everyone acquires a domicile of origin at birth. As Evelyn's parents were married, she would have acquired the domicile of her father at birth. A domicile of choice can be acquired by an individual. Such a domicile of choice is acquired when an individual takes up actual physical residence in a new country and demonstrates that he intends to reside permanently in that new country. All ties with the individual's country of origin should be severed to show that a new domicile of choice has been acquired.

Evelyn's father appears to have had an Irish domicile of origin. It appears that Evelyn's father had acquired a domicile of choice in the UK as he moved permanently to Birmingham, after the move he only visited Ireland for short holidays and he was laid to rest in the UK. Evelyn was born in the UK. It appears to be the case that Evelyn's father had acquired a domicile of choice in the UK before Evelyn was born. If this is the case, Evelyn will have a domicile of origin in the UK. In addition, Evelyn is now 41 years old and so it may be the case that as she has made the UK her permanent home to date and therefore she has a domicile in the UK. Both Evelyn and Paddy have agreed to spend the next five years in Ireland to see if it is somewhere she can settle. Failing her ability to settle in Ireland, she is planning on moving back to Birmingham.

(3 Marks)

Prior to 2015, Evelyn spent less than 30 days each year in Ireland. She is therefore not Irish resident in any of these years. Evelyn is not resident in Ireland in 2015 as she did not spend more than 183 days in Ireland in 2015. Evelyn is Irish resident in 2016 as she spent at least 280 days in Ireland between 2015 and 2016.

(2 Marks)

Evelyn will not be regarded as ordinary resident in Ireland as she will only be regarded as ordinarily resident in Ireland if she has been resident in Ireland for the three previous tax years. As 2016 is the first year in which Evelyn is Irish tax resident, she will be regarded as ordinarily resident is 2019.

(1 Mark)

(6 Marks)

(b) An appraisal of Evelyn's income and gains which are within the charge to Irish tax for 2016 including the reasons why particular sources of income/gains are or are not within the charge to Irish tax in 2016.

On the basis that Evelyn is Irish resident and non-domiciled in 2016, her Irish tax position is summarised below:

Source of income/gains	**Amount**	**Taxable in Ireland**	
Irish employment salary	€59,000	Yes, fully table in Ireland	(1 Mark)
UK Rental income	€19,000	Yes, fully taxable in Ireland as it is remitted to Ireland. Full double taxable relief should be available in Ireland in respect of the €800 UK tax paid on this rental income.	(2 Marks)
UK dividends	€2,500	Not taxable in Ireland as not remitted.	(2 Marks)
December 2016 Evelyn sold a commercial investment property she owned in Birmingham	€450,000	Taxable in Ireland on full gain as proceeds remitted to Ireland. Gain of €239,730 (€450,000 - €209,000 =€241,000, €241,000-€1,270=€239,730) is taxable at 33%.	(2 Marks)

(7 Marks)

(c) Advice regarding the capital acquisitions tax (CAT) implications of the cash gifts received in 2016 from Paddy's parents.

Both Evelyn and Paddy will be within the scope of CAT as they are both Irish resident. In addition, as Paddy's parents, the disponers, are also Irish resident the gifts would have been within the scope of Irish CAT as the disponers are Irish resident.

(2 Marks)

Paddy will utilise €19,000 of his group A threshold in respect of the gift. That is, the €25,000 gift less an annual exemption from his mother of €3,000 and an annual exemption of €3,000 from his father.

(2 Marks)

Evelyn will also receive a taxable gift of €19,000 as she can avail of the two €3,000 annual exemptions also. She will however, be only entitled to a group C threshold of €15,075. Therefore, her CAT liability will be €1,295 (€19,000 - €15,075 = €3,925, €3,925 x 33% = €1,295).

(2 Marks)

The due date for Evelyn to file her CAT return (Form IT38) will be 31 October 2017. Payment of her liability will be on this date also.

(1 Mark)

(7 Marks)

SOLUTION 3

FILE NOTE – FOR THE FILE OF MARY HARPER
Date: 28 April 2017
Re: Transfer of shares and building

Capital gains tax (CGT) implications for Mary of the proposed transfer of shares and the building to Justin

Mary should be able to avail of retirement relief on the transfer of her 100% shareholding to Justin.

The following conditions must be satisfied for retirement relief to apply:

1. The individual making the disposal must be over the age of 55. As Mary is transferring assets to her child, there is no restriction on the amount of retirement relief where she makes the transfer before turning 66. After 66 a limit of €3,000,000 will apply.

2. The assets transferring must be qualifying assets. Qualifying assets include shares in a family trading company where the shares have been held by the individual making the disposal for a period of not less than 10 years ending on the disposal and the individual has been a working director of the company for 10 years, five of which years he/she has been a full-time working director of the company – HLSL is a family trading company as Mary owns at least 25% of the shares. Mary has held her 100% shareholding for at least a 10 year period immediately prior to the disposal of the shares. Mary has also worked full-time for HLSL since its incorporation in 2005.

3. Qualifying assets also includes assets owned by the individual but used by the family company. Therefore, assets such as buildings, plant and equipment owned personally by a controlling shareholder for a period of 10 years ending on the disposal, but used by the company for the purposes of carrying on its trade, qualify for relief if the assets are transferred at the same time as the shares in the company in which the assets are used – Therefore the office building held by Mary should qualify for retirement relief if it is transferred to Justin at the same time as the shares in HLSL.

4. For full retirement relief to apply on a disposal to a child all of the company's chargeable assets must be chargeable business assets. A chargeable asset is an asset on the disposal of which any gain arising would be within the charge to CGT. A chargeable business asset is a chargeable asset which is used for the purpose of the company's trade.

(2 Marks)

Mary and the shares in HLSL satisfy all the above conditions for retirement relief. It is important to note that if Mary does not transfer the office building at the same time as she is transferring the shares to Justin, retirement relief will not be available on the later transfer of the office building.

Full retirement relief will not be available on the shares in HLSL due to the investment property which is held by the company.

Chargeable business assets calculation

	Chargeable assets	**Chargeable business assets**
	€	€
Property, plant & equipment	2,450,000	1,900,000
Intangible assets	525,000	525,000
Inventories		
Trade receivables		
Bank	2,975,000	2,425,000

Percentage of CBA/CA 82%

(2 Marks)

CGT calculation on the disposal of shares		€	
Deemed proceeds	3,200,000		
Base cost of shares		(1,000)	
Gain		3,199,000	
Amount qualifying for retirement relief		2,623,180	
Amount not qualifying for retirement relief		575,820	
CGT at 33%*,**		190,021	(2 Marks)

*No annual exemption where retirement relief claimed in year.
** Marks also given where Entrepreneur Relief considered.

CGT calculation on the disposal of office building

	€	
Deemed proceeds	250,000	
Less cost	(130,000)	
Gain	120,000	
Amount qualifying for retirement relief if transferred with shares	120,000	
CGT if office building not transferred with shares (ignoring annual exemption)	39,600	
		(2 Marks)

If Mary transfers her shares and the building to Justin in 2017, then she will have a CGT liability of €172,207. If Mary splits the transfer of the building from the shares, then she will be exposed to a CGT liability of €39,600 on the transfer of the building.

It is therefore advisable from a tax perspective that she transfers both at the same time. (2 Marks)

(10 Marks)

Stamp duty implications for Justin of the proposed transfer of shares and the building

Stamp duty at a rate of 1% will be payable by Justin on the shares. That is €3.2 million x 1% = €32,000.

Stamp duty at a rate of 2% will be payable by Justin on the office building. That is €250,000 x 2% = €5,000.
(2 Marks)

Capital acquisitions tax (CAT) implications for Justin of the proposed transfer of shares and the building

CAT business relief should be considered in respect of the proposed transfers in 2017. The conditions for business relief are:

1. The assets must be relevant business assets. Relevant business assets include unquoted shares of a trading company, provided the recipient satisfies one of the following conditions on the valuation date, after taking into account the gift/inheritance received:

   - he must control more than 25% of the voting rights of the company in their own name; or
   - the company is, after taking the gift or inheritance, under the control, i.e. more than 50%, of the recipient and his relatives; or
   - he controls 10% or more of the issued share capital of the company and has been a full-time working director or employee of the company throughout the period of five years ending on the date of the gift.

   This test is satisfied in respect of the 2017 disposal.

2. Relevant business assets for the purpose of CAT business relief also includes land and buildings, which immediately before the gift were used wholly or mainly for the purpose of a business carried on by a company controlled by the recipient. To qualify for relief under this heading, the disponer must also simultaneously transfer shares in the company which qualify as relevant business property. The buildings must continue to be used for at least six years by the company to avoid a clawback of the relief.

   Therefore, the office building will only qualify for CAT business relief if it is transferred at the same time as the shares to Justin.
3. A minimum period of ownership test must be satisfied by the disponer. To qualify for business relief, the asset must have been continuously in the beneficial ownership of the disponer, for five years immediately prior to the date of the gift – This condition is satisfied.

For full business relief to apply, there would need to be no investment assets held by HLSL. (2 Marks)

Taxable value of shares	**Qualifying property**	**Non-qualifying property**	**Total**
	€	€	€
Market value	3,236,000	550,000	3,786,000
Less liabilities	(586,000)		(586,000)
Taxable value before relief	2,650,000	550,000	3,200,000
Less stamp duty	(26,500)	(5,500)	(32,000)
	2,623,500	544,500	3,168,000
Business relief	(2,361,150)	0	(2,361,150)
Taxable value	262,350	544,500	806,850

(2 Marks)

Taxable value of office building	€
Market value	250,000
Less stamp duty	(5,000)
	245,000
If BR available	(220,500)
Taxable value	24,500

(1 Mark)

CAT computation - where transferred together	€	
Taxable value	831,350	
Less annual exemption	(3,000)	
Less remaining Group A	(280,000)	
Taxable	548,350	
CAT at 33%	180,956	(1 Mark)
Less CGT/CAT offset	(190,021)	
Taxable value	0	

CAT computation - where building and shares are transferred separately	€	
Taxable value	1,051,850	
Less annual exemption	(3,000)	
Less remaining Group A	(280,000)	
Taxable	768,850	
CAT at 33%	253,721	(1 Mark)
Less CGT/CAT offset	(229,621)	
Taxable value	24,100	(1 Mark)

(10 Marks)

SOLUTION 4

(a) R&D

Companies that qualify for R&D have the option to surrender all or part of the R&D tax credit to “key employees” who have been involved in or are central to the R&D activity. That is, the key employee must be engaged in the R&D process.

From the company perspective:
The company must be paying corporation tax as the quantum of credit which can be surrendered to the employee is limited to the amount of corporation tax due by the company prior to taking the R&D credit into consideration. Therefore the maximum amount for the year ended 31 December 2015 was the corporation tax liability amount of €127,000.

(2 Marks)

From the employee’s perspective:
The legislation specifically defines a “key employee” as an individual who:

- is not, or has not been, a director of the company and is not connected to a director of the company;
- does not have, or never has had, a material interest in the company or is not connected with a person who has a material interest in the company;
- performs at least 50% of their activities “in the conception or creation of new knowledge, products, processes, methods and systems”; and
- has 50% or more of their emoluments which qualify for the R&D tax credit.

(2 Marks)

The effective rate of tax payable by the individual employee cannot be reduced below 23%. (1 Mark)

An employee in receipt of R&D payments must make a claim to Revenue in order to receive a tax refund.

(1 Mark)

2016 if the first tax year that the surrendered credit can be claimed by key employees.

The eligibility of the two employees is outlined below:

- Jennifer Clarke – Jennifer will not be entitled to claim the R&D credit in 2016 as she owns more than 5% of the shares in ISL.

(2 Marks)

- Michael Conlon – Michael should be able to claim the relief in 2016 and 2017 as he meets all of the conditions.

2016	Gross pay	€75,000	
	PAYE	€16,950	
	Effective rate of tax	22.6% therefore no relief as lower than 23%.	(2 Marks)
2017	Gross pay	€105,000 (estimated)	
	PAYE	€29,100 (estimated)	
	Effective rate of tax	27.7%	
	Tax if rate 23%	€24,150	
	Refund due	€4,950	(2 Marks)

(12 Marks)

(b) Cash extraction

Gerry Kyle will be entitled to extract the €30,000 balance on his director’s loan account tax free. (2 Marks)

A termination payment should be considered. There are three possible ways in which his termination payment entitlement can be calculated:

1. The basic exemption = €10,160 + €765 x 20 years = €25,460
2. The increased basic exemption = €10,160 + €765 x 20 years + €10,000 – tax free lump sum from pension i.e. €80,000
3. The standard capital superannuation benefit (SCSB) = (€60,000 x 20)/15 – tax free lump sum from pension i.e. €80,000

(2 Marks)

As Gerry is entitled to a tax free lump sum from his pension scheme on retirement, this will impact the calculation of the increased basic and the SCSB. Therefore, the maximum amount that Gerry can receive tax-free will be €25,460.

(2 Marks)

Therefore, a total of €55,460 can be paid to Kyle tax free on retirement with any balancing amount being to income tax and USC at his marginal rate of income tax. The remaining balance of €4,540 can be taken by way of salary or dividend.

(2 Marks)
(8 Marks)

SOLUTION 5

(a) As it is still 12 months from the due date of the filing of the corporation tax return for the period ended 31 December 2015, Majella is within the self-correction window. The self-correction window will close on 19 September 2017.

(1 Mark)

Therefore, the corporation tax return for the period ended 31 December 2015 may be self-corrected without penalty as long as:

- Revenue is notified in writing of the adjustments to be made, and the circumstances under which the errors arose before 19 September 2017. The increase in a pension accrual should be an addback in the case I computation and therefore the case I profit for the period ended 31 December 2015 should increase from €27,000 to €42,000.

(2 Marks)

- A computation of the correct tax and statutory interest payable is provided, along with payment in settlement. As a result of the trading loss that is incurred in the year ended 31 December 2016, the carry back of losses from 2016 will mean that all corporation tax that was paid based on trading profits of €27,000 will be refunded. In addition, there will be sufficient losses available to cover an additional €15,000 of case I trading profits which should have been taxed.

(2 Marks)

(5 Marks)

(b)

Loss memo			**€**
Trading loss - YE31.12.16			160,000
Utilised against trading income - PE31.12.15		Amended due to correction	(42,000)
Utilised against 6/12 trading income - YE30.06.15			(20,000)
			98,000
Value basis claims			
YE31.12.16 - need to use	20,000	(10,000 x 2)	(20,000)
PE31.12.15 - need to use	35,000	(17,500 x 2)	(35,000)
YE31.06.15 - can use	18,000	(18,000x6/12) x 2	(18,000)
Losses available for carry forward against future same trade profits			25,000

(2.5 Marks)

Original computations

	Year ended 30 June 2015	**Period ended 31 December 2015**	**Year ended 31 December 2016**
	€	**€**	**€**
Case I	40,000	27,000	0
Case V	18,000	17,500	10,000
CT at 12.5%	5,000	3,375	0
CT at 25%	4,500	4,375	2,500
CT payable no loss claims	9,500	7,750	2,500

(1.5 Marks)

Amended computations where loss relief claimed

	Year ended 30 June 2015	**Period ended 31 December 2015**	**Year ended 31 December 2016**	
	€	**€**	**€**	
Case I	40,000	42,000	0	
Less s396A loss relief	(20,000)	(42,000)		(2 Marks)
Case I taxable	20,000	0	0	
Case V	18,000	17,500	10,000	
CT at 12.5%	2,500	0	0	
CT at 25%	4,500	4,375	2,500	
Less s396B loss relief	(2,250)	(4,375)	(2,500)	(1.5 Marks)
CT after max claims	4,750	0	0	
Refund due	4,750	7,750	2,500	(1.5 Marks)

(9 Marks)

(c) There are anti-avoidance rules that will limit the ability for Majella to utilise the losses forward in a ceramic cookware company against her potential profits from a new trade with the United Arab Emirates' market.

(1 Mark)

The tax legislation disallows the carry forward of trading losses incurred before a substantial change of ownership of a company's shares. The disallowance will apply:

1. If a major change in the nature or conduct of the company's trade and the change in ownership both occur within any period of three years

   A "major change in the nature or conduct of the trade" includes:
   - o a major change in the property dealt in, services or facilities provided, in the trade; or
   - o a major change in customers, outlets or markets of the trade.

or

2. Where the activities of the trade have become small or negligible and there is a change of ownership before any considerable revival of the trade.

(3 Marks)

Therefore, Majella will not gain any corporation tax benefit from paying €10,000 for the shares in a ceramic cookware company with losses forward. Such a purchase will be a change in ownership and as a result of this change in ownership, the trade of the company will shift from a ceramic cookware trade to a pottery business. Majella should not purchase the shares in the ceramic cookware business as the losses forward in the ceramic cookware business will be restricted due to the above loss buying provisions.

(2 Marks)
(6 Marks)