CPA IRELAND | CERTIFIED PUBLIC ACCOUNTANTS

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - APRIL 2018

NOTES:

You are required to answer Question 1 and **any three** from Questions 2,3,4 and 5.
Should you provide answers to all questions, you must draw a clearly distinguishable line through the answer not to be marked. Otherwise, only the first three answers to Questions 2,3,4 and 5 will be marked.

TAX TABLES ARE PROVIDED

NOTE: IF YOU MAKE AN ASSUMPTION IN ANY QUESTION PLEASE STATE THAT ASSUMPTION CLEARLY

Time Allowed
3.5 hours plus **20 minutes** to read the paper.

Examination Format
This is an open book examination. Hard copy material may be consulted during this examination subject to the limitations advised on the Institute's website.

Reading Time
During the reading time you may write notes on the examination paper, but you may not commence writing in your answer booklet.

Marks
Marks for each question are shown. The pass mark required is 50% in total over the whole paper.

Answers
Start your answer to each question on a new page.

You are reminded to pay particular attention to your communication skills, and care must be taken regarding the format and literacy of the solutions. The marking system will take into account the content of your answers and the extent to which answers are supported with relevant legislation, case law or examples, where appropriate.

Answer Booklets
List on the cover of each answer booklet, in the space provided, the number of each question attempted. Additional instructions are shown on the front cover of each answer booklet.

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND

ADVANCED TAXATION

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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. You are Michael Donnelly, a recently qualified Certified Public Accountant, working in a practice in Dublin. You have just returned from a two-week holiday to find the following email in your inbox, which was sent by your manager this morning.

To: Michael.Donnelly@CPATax.ie
From: Edmund@CPATax.ie
Re: Various clients - urgent tax advice
Date: 27 April 2018

Michael,

I hope you had a nice break in Italy. While you were off, I had a number of meetings/calls with clients on your client list. Can you please draft a tax discussion document with your thoughts on the following cases? I have a free hour from 1pm tomorrow when we can meet to discuss your advice, before going back to the various clients.

Drum Grocery Store – Matthew Drum

As you know, from recent meetings we have had with Matthew Drum, over eight years ago he purchased the grocery store premises on 1 February 2010 for €250,000 and did not pay any VAT on the purchase of the building. Legal fees and stamp duty associated with the purchase were €9,000.

With the help of his nephew David (who is the son of Matthew's sister), he has turned the grocery store into a very profitable business. Due to the large range of organic food and vegetables sold, customers are prepared to travel a considerable distance and pay premium prices to purchase this produce. Matthew has just turned 55 years old and he wants to gift the business to his nephew on his 21st birthday on 31 August 2018. Details of the statement of financial position for the year ended 31 March 2018 for Drum Grocery Store are as follows:

	Current market value	
	€	
Assets		
Goodwill (built up since February 2010)	120,000	
Shop premises	350,000	*
Plant & machinery	32,000	**
Inventory	200,500	**
Trade receivables	1,500	
	704,000	
Liabilities		
Trade payables	(38,000)	
Bank overdraft	(20,000)	
Net value	646,000	

* Matthew spent approximately €5,000 each year on general repairs to the shop.
** All plant & machinery and inventory cost more than its current market value.

Matthew has employed David on a part-time basis (6 hours per week) since he began the business in 2010. David is currently in his final year at university.

New prospect – Dicey Phone Accessories Ltd

I had a telephone call with the finance director of Dicey Phone Accessories Ltd (DPAL) last week. DPAL is a UK tax resident company whose trade involves selling phone accessories online. DPAL is UK VAT registered. DPAL's customer base is growing consistently in Ireland. Currently, most of DPAL's customer base is made up of large multinational supermarkets. However, the marketing team has been specifically targeting small VAT registered shops in Ireland and also private customers living in Ireland, over the last year. This marketing campaign is beginning to pay off. DPAL now feels that it is necessary for the company to immediately rent a storage unit near Dublin Port. This will be used to store inventory which will be ultimately purchased by Irish customers. During the call, DPAL's finance director also mentioned that the company may consider hiring a sales representative in the Dublin region. Such a sales representative will be able to negotiate and agree contracts with Irish customers. However, it is not anticipated that a suitable person will be hired for at least 12 months.

Kind Regards,

Edmund

REQUIREMENT:
Draft a response email to Edmund, your manager, in which you prepare:

(a) Advice for Matthew regarding the capital gains tax and VAT implications for him in respect of the proposed transfer of the grocery store business to David.

(10 marks)

(b) Advice for David regarding the capital acquisitions tax and stamp duty implications for him in respect of the proposed transfer of the grocery store business from Matthew.

(10 marks)

(c) Advice for Dicey Phone Accessories Ltd (DPAL) on the corporation tax implications for the company, in Ireland, when it hires a storage unit and also when it hires a sales representative in Ireland in 12 months time.

(10 marks)

(d) VAT advice for DPAL in respect of its current sales in Ireland to multinational supermarkets, small VAT registered shops in Ireland and private customers living in Ireland.

(10 marks)

[Total: 40 marks]

2. You are a recently qualified Certified Public Accountant and have just had a two-hour meeting with Ruth Magee, a wealthy widow with one child, Niall. Ruth was accompanied to the meeting by Dervla, her niece. Dervla is one of the trustees of the 'R. M. Discretionary Trust' which was established in 2013.

Ruth transferred property worth €650,000 to the discretionary trust in 2013. The property comprised of 5,000 shares in Box Plc valued at €70 per share and a building worth €300,000. Ruth also transferred €9,500 cash to the trust to cover the stamp duty incurred on the transfer of the shares (1%) and the building (2%).

On the creation of the trust, Ruth instructed that the shares were to be transferred to Niall on his 18th birthday on 25 May 2018. As Niall's birthday is less than one month away, during the meeting, you checked the current share price of the Box Plc and noted that the shares are currently trading at €95 per share.

You asked Ruth to confirm whether Niall had ever received any gifts/inheritance previously. Ruth advised that she gifted €3,000 to him on his 16th birthday, and she confirmed that this is the only previous benefit he has received.

The building which was transferred to the trust in 2013 is to be held by it until the trustees feel that Niall should receive absolute ownership of it. Dervla, as trustee, mentioned that the building has been rented since 1 January 2017. The annual gross rent is €18,000. Letting agent fees are 10% of gross rents and repairs costs of €5,700 were incurred in December 2017. The trustees are paid €7,000 annually for time in managing the trust.

REQUIREMENT:
Assess and advise Ruth on the tax implications for:

(a) Niall and the trustees in respect of the transfer of the shares to Niall on 25 May 2018. You should use the value of the shares noted above as an estimate of the market value of the shares on 25 May 2018. (12 marks)

(b) The trust in respect of the rental income which is generated from the building. (8 marks)

[Total: 20 marks]

3. It is now 27 April 2018 and one of your biggest clients, Michael of Murray Holdings Ltd., called to the office earlier today to drop in his books for the year ended 31 December 2017. While Michael, was in the office he asked if he could run a few queries past you. Having noted the following queries during the meeting you told Michael that you would check the company files and call him later today with some advice.

Query 1
Michael personally owns a commercial property, in Drogheda, which he acquired four years ago and which he uses as a storage premises for his sole trade plumbing business. He bought the premises from a developer when the building was complete and he was charged VAT on the purchase. He reclaimed all the VAT on the purchase of the building. Michael has now been offered €300,000 for the building by a trader who runs a VAT exempt business.

Query 2
MHL owns two subsidiaries: MCM Developments Ltd. (DEV) is held 80% by MHL and 20% directly by Michael; Murray Pub Ltd. (PUB) is owned 100% by MHL. All companies are Irish tax resident.

Michael has a keen interest in the construction trade carried on by DEV. Although PUB is a very profitable company, Michael intends to sell PUB in five to ten years as he feels the running of the pub trade takes up too much of his time. Currently, PUB does not own the property from which it trades. The building from which the pub trade is run belongs to DEV and it bought the building in 2003 for €100,000. No VAT was charged on the purchase of the building. Twelve years ago, DEV carried out some enhancement expenditure on the pub to the value of €75,000 plus VAT. DEV claimed back all VAT on this expenditure. A local valuer recently told Michael that the building could reach €600,000 if sold on the open market. Michael has decided that DEV will charge PUB €200,000 for the property and that the transfer will happen on 30 June 2018.

REQUIREMENT:
Prepare advice for Michael on:

(a) The VAT implications of the proposed sale of the building in Query 1 for €300,000 to a trader who runs a VAT exempt business. Calculations are not required.

(6 marks)

(b) Assess and advise Michael on the capital gains tax, VAT and stamp duty tax implications for DEV and PUB in respect of the proposed transfer of the building (from which PUB trades) on 30 June 2018. Any reliefs/tax planning should be discussed, given that Michael intends to sell PUB in the next five to ten years.

(14 marks)

[Total: 20 marks]

4. As a newly qualified Certified Public Accountant, your manager has asked you to meet with Herbie Gallagher, a prospective new client of the practice. Herbie claims he has never needed an accountant before and that he has never filed an income tax return.

At your initial meeting with Herbie, he confirmed that he is Irish tax resident and domiciled. He is employed by a multinational pharmaceutical company which has its headquarters in Dublin and is separated from his wife and he has no children.

Herbie explains that he received a letter from Irish Revenue last week stating that they intend to audit his affairs as they believe he has undeclared rental income. He explained that he thinks the Revenue audit letter is referring to a house, in Limerick, that he sold on 31 December 2015 for €300,000. Herbie had purchased this house on 1 July 2002 for €120,000. The property was purchased in his name only, when he got married in 2002. He explained that the property was his primary home until 31 December 2009. After he and his wife separated in late 2009, Herbie decided that he would take a career break from his work and go travelling. Having travelled the world for two full years he only returned to live in the house on 1 January 2012. At that point his money had run out as he neither worked or rented out his house while travelling. Herbie explained that upon his return from travelling he resumed his employment contract and in mid-May 2014 received a promotion. Although this promotion meant that his earnings grew substantially, the downside was that he had to move to Dublin. As a result of the promotion, Herbie purchased an apartment in Dublin and he moved to this apartment on 1 July 2014. From 1 July 2014, Herbie rented out his house in Limerick as the Dublin apartment was his principal residence.

Herbie received €3,000 per month for the house until 31 December 2015. His annual insurance costs remained at €738 for 2014 and 2015. He had a very small mortgage on the property and monthly repayments were fixed at €530, of which €145 was interest. When asked about repair costs, Herbie said that the only cost he incurred was the replacement of the boiler in January 2015 for €1,600.

Herbie has been a higher rate tax payer for many years and in 2014, he paid €14,500 in income tax. In 2015, his annual tax liability jumped to €24,000. All Herbie's tax was paid through the PAYE system and he has never had to deal directly with Revenue before in relation to his tax position. Herbie is extremely anxious about this Revenue audit notification and is unsure how he should proceed. He is worried that Revenue will search his apartment in Dublin causing him considerable embarrassment. Herbie admitted that he was aware that he should pay tax on any rental profits he made but he just never got around to engaging an accountant. He also confirmed that the solicitor who dealt with the sale of his house in 2015 did warn him that he may have a capital gains tax exposure on the property. Again, Herbie chose to ignore this advice.

REQUIREMENT:
Prepare advice for Herbie on:

(a) How he should deal with this Revenue audit letter, and provide him with an estimation of his outstanding income tax and capital gains tax liabilities. You should also give him an indication of the likely penalties he may incur. (The rates of income tax and capital gains tax that applied in 2014 and 2015 remain unchanged by Finance Act 2017. That is, CGT is at a rate of 33% and higher rate income tax is 40%)

(16 marks)

(b) The likelihood that Revenue will search his apartment in Dublin. (4 marks)

[Total: 20 Marks]

5. It is 27 April 2018 and you have just been briefed by your manager, Claire, regarding new clients of the practice, Giles, Martha and Meabh Suparinio. Claire provides you with the following notes from a recent Skype call she had with Giles (in Malta) and Meabh (in Hong Kong):

- Giles and his wife Martha lived in Dublin for 14 years before retiring to Malta on 31 December 2015. They holidayed only for 25 days in Ireland in 2016.
- Giles is Italian domiciled, and Martha is Irish domiciled. They have one daughter, Meabh, and one son, Lorenzo. Both children have taken and retained their father's Italian domicile.
- In February 2014, Giles purchased a restored farmhouse in Malta for €990,000 in his sole name for himself and Martha to live in. At that time, Giles updated his will to provide that, on his death, the property should pass equally to Martha and Meabh.
- Meabh has been living and working in Hong Kong since January 2008, and on 1 September 2017 she signed a one-year employment contract with a multinational bank there. As her children are close to school age, Meabh is considering returning to live in Ireland in December 2018.
- Lorenzo has continued to live in Ireland after his parents emigrated.
- Giles purchased a rental property in Dublin city centre in 2007 for €1,140,000 including stamp duty and legal fees.
- This property is currently valued at €950,000. Lorenzo has just secured permanent employment at a hospital in Dublin and he has therefore approached his father to buy the rental property in Dublin. Giles plans to transfer the property to Lorenzo in August 2018 in return for €500,000. This is the maximum mortgage that he can raise.
- Neither Lorenzo nor Meabh has previously received gifts from either of their parents.
- As a result of Brexit, the multinational bank which Meabh works for in Hong Kong is opening a headquarters in Ireland in late 2018. Meabh is considering applying for a job with the bank where she will earn a gross salary of €220,000 in 2019.
- Meabh's friend, who lives in Ireland, has set up a packaging company in Ireland and she is aware that she is looking for investment in the company. Glenbar Packaging Ireland Ltd manufactures bespoke packaging solutions of large items weighing over one tonne. The company has just been registered as a qualifying company for the Employment and Investment Incentive Scheme.
- Meabh has savings of approximately €400,000 which she intends to take to Ireland when she returns to live there. She would like to invest €200,000 of this amount in Glenbar Packaging Ireland Ltd.

REQUIREMENT:

Draft a memorandum to your manager Claire for a scheduled conference call she will have with Giles and Meabh later this week. Your memo should include the following:

(a) An analysis ofhe tax implications for Martha and Meabh, as a result of their inheritance from Giles, if Giles were to die in 2018 or in 2024 (assuming Meabh returns to Ireland as planned in December 2018 and Martha continues to live in Malta).

You should assume that the same tax rates, reliefs and exemptions apply in 2024 as the current tax year and that the value of the property remains unchanged from its current value.

(8 marks)

(b) An examination of the potential capital acquisitions tax, stamp duty and capital gains tax implications for Lorenzo and Giles on the proposed transfer of the rental property in Dublin.

(6 marks)

(c) Advise Meabh on the income tax relief she can obtain in 2019 if she were to invest €200,000 in Glenbar Packaging Ireland Ltd. Meabh would also like a summary of the main points of any relief available.

(6 marks)

[Total: 20 marks]

END OF PAPER

SUGGESTED SOLUTIONS

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - APRIL 2018

SOLUTION 1

To: Edmund@CPATax.ie
From: Michael.Donnelly@CPATax.ie
Re: Various clients - urgent tax advice
Date: 15 May 2018

Edmund

Please find below my thoughts on the various queries you sent. Please let me know if you would like to discuss the contents of this email in further detail.

(a) Drum Grocery Store

Tax considerations for Matthew – Capital Gains Tax (CGT) & VAT

Although, Matthew is over 55 years, retirement relief will not be available on the transfer as he has not owned and traded the business for 10 years.

1

Matthews CGT position is summarised below:

CGT for Matthew

Goodwill	€	€	
Proceeds	120,000		
Less cost	Nil		
		120,000	
Shop premises			
Proceeds	350,000		
Less cost	(250,000)		
Less cost of acquisition		(9,000)	
		91,000	
Plant & machinery			
No CGT as cost greater than current market value		0	
Inventory			
Not a chargeable asset for CGT purposes.		211,000	
Less annual exemption		(1,270)	
		209,730	
CGT at 33% (or 10% where ER claimed)		69,211 / (20,973)	5

With regards to VAT, transfer of business relief should be available. VAT is not chargeable if the following conditions are satisfied:

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

2

As no VAT was charged on the property when it was acquired by Matthew and the property does not appear to have been developed while Matthew owned it, the property would be exempt from VAT at the date of the gift and it also has no capital goods scheme attaching to it. Therefore, as the supply of the property would have been VAT-exempt in the absence of VAT transfer of business relief, there are no VAT implications for David.

2

10

(b) Tax considerations for David – Stamp duty and capital acquisitions tax (CAT)

Favourite nephew relief will not be available as David has not worked on a full-time basis for a period of 5 years. David will therefore be entitled to the Group B threshold of €32,500.

Business relief should be available to David on gift of the grocery business as the following conditions are satisfied:

- o The assets transferring are "relevant business assets". That is, the grocery store business is a sole trade/unincorporated business and it is this business that is being transferred. Therefore, any assets of the business such as, goodwill, trading premises, debtors, trading stocks should qualify.
- o Matthew must have held the business for 5 years. He has traded the grocery business since 2010.
- o The business must be carried on by David for a period of 6 years after the gift.

2

As both CGT and CAT arise on the same event, the CGT/CAT offset is available. There is a 2 year clawback period for the CGT/CAT offset. That is, David must retain the assets for 2 years.

David's stamp duty and CAT position is outlined below:

Stamp duty for David		
Stamp duty on property is at a rate of 2%. That is	7,000	
Stamp duty on goodwill is at a rate of 2%. That is	2,400	
As the plant and machinery can transfer by delivery, no stamp duty should arise.		2

CAT for David	€	
Net value of business	646,000	
Less stamp duty	(9,400)	
	636,600	
Less business relief	(572,940)	
	63,660	
Less annual exemption	(3,000)	
Less group B threshold	(32,500)	
Taxable value	28,160	
CAT at 33%	9,293	
Less CGT/CAT offset	(9,293)	
	0	6
		10

(c) **Dicey Phone Accessories Ltd (DPAL) - corporation tax**

Hiring of storage unit – A UK resident company is liable to Irish corporation tax only if it carries on a trade in Ireland through a branch or agency. A branch or agency is defined in s.4 TCA 1997 as "any factorship, agency, receivership, branch or management".

1

In the event that DPAL is deemed to have created a permanent establishment (PE) in Ireland, we will need to look at the terms of the Double Taxation Agreements (DTAs) between UK/Ireland (Art. 5) which states that a particular branch or agency may fall outside the scope of Irish corporation tax where the level of activities carried on by a UK resident company in Ireland are such that they do not create a PE.

1

In accordance with Art. 5, DPAL will only be subject to corporation tax in Ireland if it has a fixed place of business in Ireland through which the activities of a business are carried on. However, the UK/Ireland DTA specifically excludes from this definition the use of facilities for the storage of products or the maintenance of stock. As the storage unit is to be used by DPAL is simply for the storage of inventory, the renting of the storage unit near Dublin port will no create a PE. As noted above, as no PE is established, no corporation tax exposure for DPAL in Ireland arises.

2

Hiring a sales rep in Ireland – under Art 5 of the UK/Ireland DTA, a PE in Ireland may be established by DPAL where the company has a dependent agent in Ireland acting on its behalf in Ireland and the dependent agent has and habitually exercises a right to conclude contracts on behalf of the company. As the sales rep has the ability to negotiate and conclude the terms of the contracts, a PE in Ireland is likely to be established.

3

Article 8 of the UK/Ireland DTA taxes an enterprise (such as DPAL) in its home state (UK) only and exempts it from (double) tax in the other state (Ireland where the PE is established) unless it has a PE in that other state. Where there is a PE, only the profits attributable to that PE, as if it were run as a separate enterprise, can be taxed in Ireland.

DPAL's Irish PE will be allowed deductions from gross income and the UK company (DPAL) will be allowed credit relief against the UK taxes arising on the same profits. The process of calculating the profits of the PE can be complex, especially for Irish businesses facing higher UK taxes. In such cases, it is good to document exactly the activities of the PE so that the business can fairly attribute profits to those activities.

3

10

(d) DPAL - VAT

Multinational supermarkets – As the multinational supermarkets in Ireland will be VAT registered, DPAL should be zero rating its invoices to these customers as long as they have obtained the Irish supermarkets Irish VAT number. This is called the reverse charge procedure. As the goods are being dispatched from the UK to a VAT registered business in Ireland, the Irish business should self-account for the goods purchased in its Irish VAT return.

2

Small VAT registered shops – As these shops are VAT registered in Ireland, the same reverse charge procedure should apply.

1

Irish resident Individuals – UK VAT should be charged on sales by DPAL to its Irish non-VAT registered customer.

2

DPAL needs to be conscious of the distance selling rules. Distance selling occurs when a supplier in one EU Member State sells goods to an individual in another Member State. The purchaser will not be registered for VAT and the supplier is responsible for delivery. As noted above, where an Irish individual purchases goods from an online retailer located in another Member State (such as DPAL, a UK company), foreign (UK) VAT is payable in the foreign supplier's State (UK), at the appropriate rate applicable there.

However, where DPAL supplies goods in Ireland in excess of €35,000 in any 12-month period, then DPAL will be obliged to register for VAT in Ireland. In such circumstances, Irish VAT only would be charged to the Irish purchaser.

3

When a Permanent Establishment (PE) is established and sales through that Irish PE exceed the €75,000 VAT registration threshold, Irish VAT at 23% will need to be charged on all PE sales. That is, all sales to VAT registered and non-VAT registered customers.

2

10

SOLUTION 2

(a) CGT for trust

On 25 May 2018, Niall will become absolutely entitled to the shares and the shares will cease to be settled property. 1

There will therefore be a deemed disposal for the purposes of CGT on 25 May 2018 and CGT will be payable by the trustees on the increase in the value of the shares from the date they were acquired by the trust (€350,000) in 2007 to the date that Niall becomes absolutely entitled as against them in 2018 (€475,000).

Estimated CGT for trust - 25 May 2018

Proceeds		475,000	
Less cost	350,000		
Less stamp duty	3,500		
		(353,500)	
Gain		121,500	
CGT at 33%		40,095	
			2

CAT for Niall

Niall will also be subject to CAT on the gift taken from Ruth in 2018. 1

The €3,000 that Ruth gifted Niall on his 16th birthday will be covered by the small gift exemption. 2

CAT for Niall

Taxable value	475,000	
Less small gift exemption	(3,000)	
Less Group A threshold	(310,000)	
Net taxable value	162,000	
CAT at 33%	53,460	
Less CGT/CAT offset	(40,095)	
CAT payable	13,365	
		3

The CGT/CAT offset under Section 104 CATCA 2003 should be available provided Niall retains ownership of the shares for a minimum period of 2 years. 2

Stamp duty

No stamp duty will arise on the appointment of assets from the trust. 1

12

(b) Discretionary trust tax should not be an issue as Ruth, the settlor, is alive. 1

The trustees must make annual returns of income on which they will be charged income tax at the standard rate. 1

Trustees are not entitled to claim the personal credit, allowances, exemptions or reliefs from income tax that are available to individuals. 1

Trustees are not subject to PRSI or USC in relation to trust income, or the restriction of specified reliefs for high-income earners. 1

The trustees mandate income directly to a beneficiary, Revenue may assess that beneficiary to income tax directly instead of the trustees. 1

If the income has not been distributed within 18 months of the end of the year of assessment in which it arises, it will be subject to a surcharge of 20%. 1

Income tax for trust

Gross rents		18,000	
Less expenses			
Letting agent fees	1,800		
Repairs	5,700		
		(7,500)	
		10,500	
Income tax at 20%		2,100	1

No deduction may be taken for the trustee's fees of €7,000 1

8

SOLUTION 3

(a) If Michael sells the commercial property, this will be the second supply of the property. As Michael has occupied the premises for the purposes of his business for at least 2 years, the building is no longer regarded as new for VAT purposes. 1

The sale will be regarded as exempt unless he and the purchaser jointly elect for VAT to be charged on the sale. Details of this joint option will usually be included in the sale agreement. 2

Where the option to tax is exercised, the purchaser must account for the VAT on the supply on the reverse charge basis. However, as the purchaser is operating a VAT exempt business, no VAT recovery will be allowed and the VAT on the purchase will have to be paid to Revenue. 2

If the purchaser does not agree to the joint option, Michael will suffer a capital goods scheme adjustment. 1

6

(b) **CGT for DEV and relief available**

A principal company, such as Murray Holdings Ltd (MHL), and its effective 75% subsidiaries form a CGT group. Therefore MHL, MCM Developments Ltd (DEV) and Murray Pub Ltd (PUB) are in a CGT group. 1

As a result of the fact that DEV and PUB being in a CGT group, the transfer of the property from DEV to PUB will be deemed to occur at a price that would give rise to a no gain/no loss position. It is compulsory. 1

For accounting purposes, the transfer may occur at the book value of those assets. For tax purposes, the consideration (if any) that actually passes is ignored. The tax relief is structured in such a manner that it is deemed to be a no loss/no gain scenario. PUB will take on DEV's base cost and acquisition date. The €200,000 charged by DEV is irrelevant. 1

The clawback provisions of the relief need to be considered as MHL intends to dispose of PUB in the next few years.

In general, the clawback will occur where there is a break in a group relationship between the company holding the asset (PUB) and the transferor company (DEV). The clawback period exists for 10 years following the transfer of that asset. 1

Therefore, if MHL sells PUB in the next 10 years (i.e. on or before 30 June 2028) then PUB ceases to be a member of a CGT group. The assets it has acquired on which group relief was claimed will be deemed to be sold and immediately reacquired by PUB (i.e. the company holding the asset). 1

The amount of corporation tax on the chargeable gain, that will fall due is,
Potential CGT clawback for PUB

Deemed proceeds		600,000	
Less cost	100,000		
Less enhancement	75,000		
		(175,000)	
Gain		425,000	
Potential CT (affective 33%)		140,250	3

VAT position for DEV

The building is old for VAT purposes. The development 15 years ago is 'minor development'. No VAT needs to be charged on the transfer. There will be no capital good scheme implications as the VAT life for development is 10 years and the development happened 15 years ago. 4

Stamp duty for PUB

Stamp duty at 2% will be payable by PUB.€600,000 x 2% = 12,000. Stamp duty associated companies relief is not available as PUB and DEV are not 90% related. 2

14

SOLUTION 4

(a)
As Herbie has received a letter notifying him of an audit, it is not possible for him to make an unprompted voluntarydisclosure. It is only possible for him to make a prompted voluntary disclosure.
1

In terms of the issue raised in the Revenue audit notification, Herbie is going to have an additional income tax liability in respect of the undeclared rental income. He is also going to have a CGT liability as a result of overclaiming principal private residence relief (PPR).

CGT liability

Purchased	01/07/2002	120,000			
Sold	31/12/2015	300,000			
Total period of ownership	162	months			
		Occupied	**Deemed**	**Vacant**	
01/07/2002 to 31/12/2009		90			
01/01/2010 to 31/12/2011				24	
01/01/2012 to 01/07/2014		30			
Rented				6	
Last 12 months from 01/01/2015			12		
		120	12	30	162

Proceeds		300,000	
Less cost		(120,000)	
Indexation	0.049	(5,880)	
Indexed gain		174,120	
Less PPR			
174,120 x $\frac{132}{162}$		(141,876)	
Gain after PPR		32,244	
Less AE		(1,270)	
		30,974	
CGT at 33%		10,222	5

Income tax liabilities

		2014	**2015**
Rental income		18,000	36,000
Less expenses			
Insurance		(369)	(738)
Interest*	75%	(653)	(1,305)
Repairs			(1,600)
Rental profits		16,979	32,357
Underpaid tax at 40%		6,791	12,943

4

* Check that letting registered with the residential tenancy board.

A 60 day extension can be applied for to Revenue.

The only way for Herbie to try to minimise penalties is to make a prompted qualifying disclosure and to co-operate with Revenue.

The benefits associated with making a voluntary disclosure include:
benefit from the following:
- non-publication of the taxpayer's name and settlement;
- non-prosecution; and
- mitigation of penalties, depending on the category of the tax default and the level of co-operation.

In terms of the quantity of penalties, Herbie is at best looking at gross carelessness with significant consequences or he could be deemed to have underpaid his income tax and capital gains tax (CGT) as a result of deliberate behaviour.

Careless behaviour with significant consequences is a lack of due care rendering tax liabilities returned by Herbie substantially incorrect. Careless behaviour with significant consequences is distinguished from deliberate behaviour by the absence of indicators in the facts and circumstances of the default, which are consistent with intent.

Deliberate behaviour involves either a breach of a tax obligation with indicators consistent with intent on the part of the taxpayer, or a breach that cannot be explained solely by carelessness. As Herbie was are of the need to pay income tax on rental profits and he was advised by his solicitor to consider his CGT, it is likely that Revenue would deem his behaviour as deliberate.

In such circumstances, that is where his behaviour is deemed deliberate, Herbie's prompted qualifying disclosure should include the following:

- State the amounts of all liabilities to tax and interest, in respect of all tax heads and periods where liabilities arise, as a result of deliberate behaviour
- It should be accompanied by payment of tax, duty and interest but not the penalty
- the disclosure must be in writing and signed by or on behalf of the taxpayer;
- a full explanation and particulars of the chargeable amounts must be included.

Interest will be due at a rate of 0.0219% per day on any late payments.

The likely penalties are 100% for deliberate behaviour although this can be reduced to 50% with co-operation. If the behaviour category can be argued as gross carelessness with significant consequences (as underpaid tax is greater than 15%) then the penalty of 40% can be reduced to 20% with co-operation.

6

16

(b)

Revenue's main search and seizure powers broadly provide that:

- Revenue has the right to enter any premises without a warrant, except premises wholly used as a dwelling house, and to seize documents; and
- Revenue is also permitted to enter, search, examine and retain documents and other records for the purpose of examination. Clearly, this gives rise to an issue in relation to any premises that are partly used for domestic/business purposes, such as a home or business premises.

2

As Herbie's apartment in Dublin is wholly used as a dwelling, Revenue is required to obtain a warrant to search premises that are "wholly used as a dwelling house". A warrant may be issued by a district judge where he or she is satisfied that it is proper to do so.

In summary, the Revenue Commissioners cannot gain access to Herbie's apartment without a warrant. However, this does not preclude Revenue from arriving at a home address and seeking access by consent.

2

4

SOLUTION 5
MEMO
To: Claire
From: CPA
Date: 28 April 2018
Re: Giles, Martha and Meabh Suparinio

(a) 2016 is the first tax year that Giles and Martha will be non-resident in Ireland. They will remain ordinary resident in Ireland until 31 December 2019.

1

A foreign domiciled person, such as Giles, will be deemed non-resident and non-ordinarily resident in Ireland for capital acquisitions tax purposes (CAT) purposes unless he was resident in Ireland for each of the five consecutive tax years immediately preceding the date of the gift/inheritance and on the date of the gift/inheritance he is either resident or ordinarily resident in Ireland. As a result of the above and the fact that a property situated in Malta is to be inherited, the CAT implications will be dependent on the status of the beneficiaries.

2

If Giles were to die in 2018, Martha will still be ordinarily resident in Ireland. She will continue to be ordinarily resident until she has been non-resident in Ireland for three consecutive years, i.e. the first year of non ordinary residence would be 2019. While Martha remains ordinarily resident in Ireland, she will be within the charge to CAT. However, she will be able to avail of the spousal exemption and therefore no CAT will arise.

2

If Giles were to die in 2024 when Martha is still living in Malta, Marta will be outside the scope of Irish CAT as she is non resident and non ordinary resident and the property is not situated in Ireland.

1

If Giles dies in 2018, Meabh is currently non-resident and non-ordinarily resident in Ireland and therefore she is not currently within the charge to CAT. Given that the property in not situated in Ireland, she will have no Irish CAT exposure.

1

If Meabh returns to Ireland in December 2018, she will be resident in Ireland in 2019. As she is non-domiciled in Ireland she will only be subject to CAT if she had been resident for each of the five consecutive tax years immediately preceding the date of the inheritance and if, on the date of the inheritance, she was either resident or ordinarily resident in Ireland. Meabh will therefore be subject to CAT in 2024.

1

CAT for Meabh	**€**
Taxable value	495,000
Less Group 1	(310,000)
	185,000
Potential CAT at 33%	61,050

1
8

(b) In August 2018, Giles will be non-resident but still ordinary resident in Ireland. As noted above, from a CAT perspective, the tax implications are dependent on the residence status of the beneficiary and/or the situs of the assets. Lorenzo has remained Irish tax resident, Irish ordinary resident and non-Irish domiciled in 2018.

The property that is transferring is an Irish situs assets.

Therefore, stamp duty, CAT and capital gains tax (CGT) will apply to the transfer. 1

Stamp duty will be at a rate of 1% as the property is residential. That is €9,900. 1

Even though Giles is neither resident nor ordinarily resident in Ireland at the time of the disposal of the property, he has exposure to Irish CGT as the property is situated in Ireland.

1

Giles will make a CGT loss in respect of the property, as detailed below. This loss can be carried forward for offset against future Irish chargeable gains which arise for Giles.

CGT for Giles	**€**	
Proceeds	950,000	
Less cost	(1,140,000)	
Loss on disposal	(190,000)	
		1

Lorenzo's CAT liability is outlined below:

CAT for Lorenzo	**€**	
Taxable value	450,000	
Less stamp duty	(9,500)	
Less Group 1	(310,000)	
	130,500	
Less annual exemption	(3,000)	
	127,500	
Potential CAT at 33%	42,075	
Less CGT/CAT offset	0	
CGT payable	42,075	
		2
		6

(c) The EIIS provides income tax relief to an individual by reference to their investment in the share capital of certain qualifying companies. It is therefore important that Meabh realises that she has to buy shares in Glenbar Packaging Ireland Ltd (Glenbar).

Relief for the Meabh will be granted by way of deduction against her total income and relief will be granted at her marginal rate of tax i.e. 40%.

Meabh must be a qualifying individual for the purposes of the relief. This means that the person must not be connected with the company in the two years prior to the purchase of shares and for a period of three years following acquisition of the shares.

Meabh will be regarded as connected if is a partner of the company, she is an employee/director of the company who is in receipt of excessive remuneration or if she controls the company, or directly or indirectly is entitled to acquire an interest of 30% or more in the company.

Relief is available in a full tax year subject to a maximum amount of €150,000. As Meabh is intending to invest €200,000 in 2019, the excess over that amount is deemed to have been invested in the following tax year (2020) and tax relief may be claimed in that next year.

EIIS is deducted from Meabh's total income before her tax liability is calculated. Given Meabh's salary level, she will receive relief at the higher rate.

One feature of the EIIS relief is that, initially, Meabh may only claim relief at 30/40 times the amount invested. This means that if the investor's marginal rate is 40%, the investment is only relieved at 30%. The remaining 10/40 relief (i.e. relief at 10%) will be available where it has been proven that employment levels have increased by the company at the end of the holding period of three years, or where evidence is provided that the company used the funds for expenditure on R&D.

The relief will be withdrawn if Meabh disposes of the shares within four years of issue or if the individual ceases to qualify within the four-year period. The relief will also be withdrawn if the individual receives any value from the company within a four-year period (e.g. a redemption of a portion of shares).

6