CPA IRELAND | CERTIFIED PUBLIC ACCOUNTANTS

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - AUGUST 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

ADVANCED TAXATION

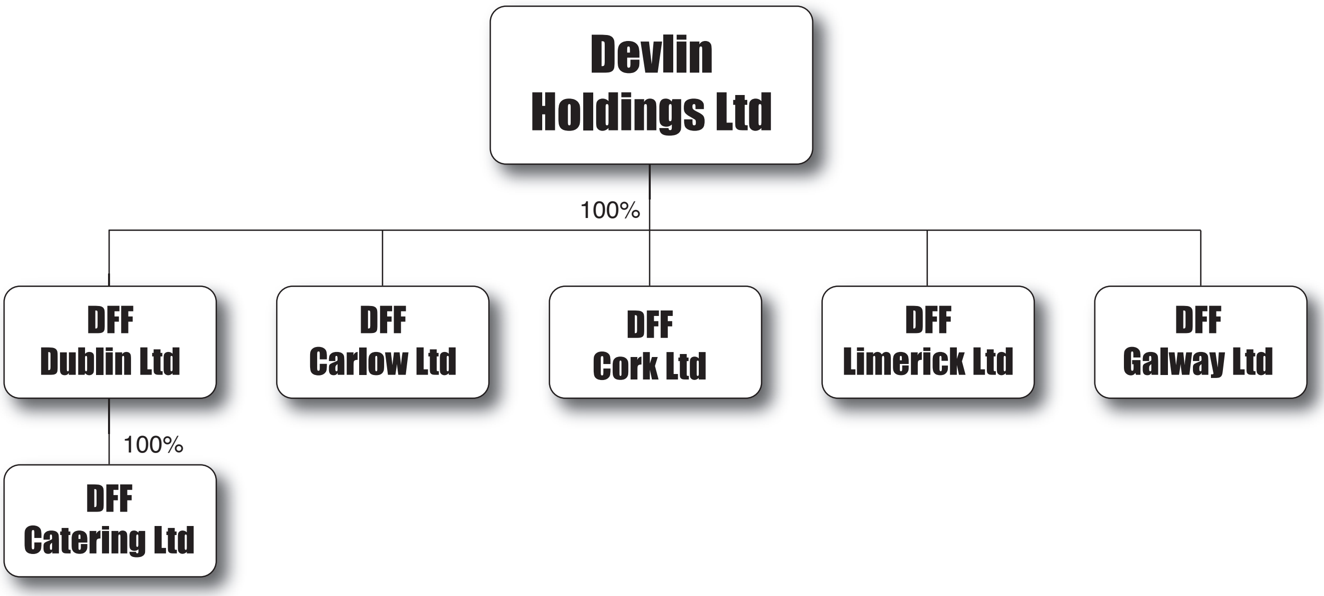
PROFESSIONAL 2 EXAMINATION - AUGUST 2015

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. The Devlin Frozen Food Group (DFF Group) is a well-established family food distribution business. The group has 5 divisions located in Dublin, Carlow, Cork, Limerick and Galway. Each division is operated from its own stand-alone company. The group structure as at 30 September 2014 is shown below.



DFF Galway Ltd bought a site with a derelict building on it in 2009 for €1,000,000. No VAT was charged on acquisition. It was intended that this land would be used to construct a new distribution warehouse for the company and therefore DFF Galway Ltd incurred the cost of demolishing the derelict building of €400,000 plus VAT. The company reclaimed all VAT associated with the work. Unfortunately, due to changes in the market place, the company directors no longer view this as a good location for DFF Galway Ltd's warehouse. DFF Limerick Ltd however could use the site for its administration centre. It has been decided that the site should be transferred to DFF Limerick Ltd at its current value of €660,000.

DFF Carlow Ltd has been a loss making company for a number of years. As at 1 October 2014, the company had losses forward of €125,000. As a result of this position and in an attempt to cut costs, it is proposed that the business of DFF Carlow Ltd should be transferred to DFF Dublin Ltd. It is proposed that the assets, creditors and the staff of DFF Carlow Ltd should be included in the transfer. DFF Dublin Ltd will pay DFF Carlow Ltd market value for any assets transferred net of the liabilities of the business. The market value and original cost of assets to be transferred are outlined below:

	Market Value	**Original Cost**	**Tax Written Down Value**
	€	€	€
Land & buildings	375,000	250,000	
Goodwilll	125,000	Nil	
Plant & Machinery	20,000	30,000	26,250
Motor vehicles	15,000	25,000	18,750
Inventory	175,000	150,000	
Trade receivables	100,000	NA	

In 2011, DFF Dublin Ltd incorporated (at a cost of €100,000) its wholly owned subsidiary, DFF Catering Ltd. At this time, the directors felt that the DFF Group should diversify into the catering business. DFF Catering Ltd is a trading company which offers catering services to large corporates in the Dublin region as well as to some hospitals. DFF Dublin Ltd has been offered €900,000 by a third party for 100% of the share capital of DFF Catering Ltd. An extract from the Statement of Financial Position as at 30 September 2014 for DFF Catering Ltd is outlined below:

ASSETS	
Non-Current Assets	**€**
Property*	350,000
Plant & machinery	125,000
Fixtures and fittings	65,000
Motor vehicles	100,000
Current Assets	
Inventory	150,000
Trade receivables	45,000
Cash	28,000

* The company owns a premises in an industrial park outside Dublin. This value represents the market value of the property at 30 September 2014.

All companies in the DFF Group are part of a VAT group with DFF Dublin Ltd being the group remitter. All companies in the group are VAT registered and have 100% VAT recovery.

REQUIREMENT:

Draft a report to the Board of Directors of Devlin Holdings Ltd advising of the following:

(a) The capital gains tax, stamp duty and VAT implications for DFF Galway Ltd and DFF Limerick Ltd of the transfer of the site.

(14 marks)

(b) The tax implications arising on the transfer of the business from DFF Carlow Ltd to DFF Dublin Ltd.

(16 marks)

(c) The tax implications for DFF Dublin Ltd on the sale of its subsidiary DFF Catering Ltd. (8 marks)

Format and Presentation (2 marks)

[Total: 40 marks]

2. You should assume that the 2014 tax rates apply throughout.

As the newly qualified Certified Public Accountant working in an accountancy practice in Cork, you met with Majella Gibbons. Majella owns 100% of Natural Make-up Ltd. The company has dramatically increased its revenues in the last few years and as a result, the company has a surplus cash balance of €950,000.

Unfortunately, Majella's personal cash flow position is not as good as her company's. During 2006 and 2007 Majella purchased a number of residential properties in Dublin which she currently rents to a number of tenants. The properties cost her €750,000 including VAT. Majella was unable to recover any of the VAT she was charged at the time of purchase. However, the properties did qualify for section 23 relief. Majella has utilised this relief annually in her income tax returns. A local estate agent has recently valued these properties at €400,000 and Majella is relieved at this valuation as this matches the loan balance outstanding on the properties. In an attempt to free up some of her monthly cash flow Majella wants to transfer her Dublin investment properties to her company. She will then use the funds that her company will pay for the properties to pay off the bank loans.

Majella is not married and as she does not have any children. She is very close to her two nieces, Yvonne (25) and Jacqueline (12).

Yvonne is due to get married next month and she and her fiancé are currently trying to find a suitable home in Cork. They have encountered some difficulty in getting a bank to lend them the money they will need to buy a house. Majella would like to gift her niece €400,000 to enable her and her fiancé to buy their first home together. In order to fund this gift, Majella is considering taking a loan of €300,000 from her company. She will pay interest on the loan of 3.5% per annum as this equates to the deposit interest rate currently earned by the company on the money on deposit. Majella is confident that she will be able to repay the loan within 2 years as she will no longer have to fund the mortgage on the Dublin investment properties.

Majella does not want to appear to favour one of her nieces over the other and so she wants to make a gift to Jacqueline now also. Despite the fact that Jacqueline is only 12 years old, Majella would like to gift Jacqueline her Cork apartment which she has lived in since 2004. She has decided that she will now settle the apartment on a fixed trust which will be for the benefit of Jacqueline when she reaches 18. Majella bought the apartment for €225,000 and it now has a market value of €275,000.

Yvonne and Jacqueline have never received any gifts or inheritances before.

REQUIREMENT:

Draft a letter to Majella discussing the following:

(a) The tax implications for Majella and for Natural Make-up Ltd of the proposed sale of the Dublin residential properties to Natural Make-up Ltd.

(7 marks)

(b) The tax implications of Majella taking a loan from Natural Make-up Ltd. (2 marks)

(c) The tax implications of the gift to Yvonne. Majella has read recently that a house can pass free of capital acquisitions tax as a result of a relief. She would like your advice in respect of this relief.

(6 marks)

(d) The tax implications that arise on the transfer of her Cork apartment to a fixed trust in favour of Jacqueline.

(5 marks)

[Total: 20 marks]

3. You are Emma Hand and you are a newly qualified Certified Public Accountant working in a medium sized practice in Dublin. You have been given the following information by your manager. He wants you to draft him a briefing memo in respect of the proposed sale of a business by a long standing client, Brian McColgan.

Brian McColgan has operated a successful engineering company, BRMC Engineering Ltd (BRMC), since 2003. He owns 100% of the issued share capital of the company. Brian is 50 years of age and has decided that he wants to sell his business in Ireland and retire to the South of France. He has identified a villa there which is on the market for €2,250,000 and would like to purchase this property. When it became public knowledge that Brian was intending to retire, a competitor company offered him €4,000,000 for the shares in BRMC. The potential purchaser has also stated that it would be interested in purchasing the assets of the company. Where the assets are simply being bought then the purchase price will be increased by the amount of the liabilities in BRMC as these will no longer be taken over by the purchaser. Below is the Statement of Financial Position for BRMC at 31 December 2014.

BRMC Engineering Ltd
Statement of Financial Position for the year ended 31 December 2014

	Note	€	€
ASSETS			
Non-Current Assets			
Property	1	2,000,000	
Plant & Machinery	2	100,000	
Investment property	3	480,000	
			2,580,000
Current Assets			
Inventory	4	200,000	
Trade receivables		450,000	
Cash		50,000	
			700,000
Total Assets			**3,280,000**
EQUITY AND LIABILITIES			
Equity and reserves			
Issued share capital		200,000	
Revaluation reserve		1,000,000	
Profit & loss account		1,840,000	
			3,040,000
Non-current liabilities			
Loan			40,000
Current liabilities			
Trade payables			200,000
Total Equity and Liabilities			**3,280,000**

Notes:

1. The company's only property is located in Lucan, Dublin. It was acquired in 2003 for €1,000,000 and is included in the financial statements at its current market value.
2. The market value of the plant & machinery is the same as its net book value and was acquired in 2012 for €140,000.
3. The company purchased this UK investment property in 2013 for €400,000 and it is included the financial statements at its current market value.
4. All inventory was purchased in 2014 and was bought for €200,000.

REQUIREMENT:

Draft a briefing memo to your manager advising which option is the most tax efficient for Brian McColgan bearing in mind his intention in respect of the net proceeds. Your memo should outline the corporation tax and capital gains tax implications of a share sale and an asset sale. With regards to an asset sale, your memo should consider the most efficient method of cash extraction from the company post the asset sale.

[Total: 20 marks]

4. It is now 2014 and you are Adele McCurdy, a newly qualified Certified Public Accountant in your office. Two of your colleagues have sent you emails which they would like your advice on.

(a) Frank has sent you the following email:

Adele,

I have a client called John Biddle who is a UK domiciled individual who has been resident in Ireland since 2007. John inherited an Irish farm in 2009 from his uncle. He claimed agricultural relief on this inheritance and as a result he paid no capital acquisitions tax (CAT). He also inherited a flower shop business located in Letterkenny (Donegal) in 2007 from his cousin. John paid no CAT on this inheritance as he availed of business relief. John still owns these assets and he also owns his home in Rathmullan (Donegal).

John has just turned 62 and he has made up his mind that he wants to retire to the South of England. He wants to move there permanently before the end of the year. In order to fund his retirement he is considering the sale of the farm and the flower shop business. John has recently been informed that the majority of the land on the farm has been earmarked for development by a property developer and as a result, the value of the land far exceeds its agricultural value. The value of the flower shop trade has reduced in recent years due to increased competition in the area and also as a result of online competition. John never created an online presence for the flower shop and as a result, the business is worth €50,000 now despite being valued at €100,000 when he inherited it.

In 2016, after his planned move to England, John intends to gift his Rathmullan home to his daughter. She is also UK domiciled but she is resident in France. She has not received any previous gifts from her parents.

John has been told by a UK advisor that if he sells and transfers assets after he leaves Ireland, there will be no Irish tax implications as he is non-Irish domiciled.

Can you please confirm if the above position is correct?

Frank

REQUIREMENT:

Draft a letter to John advising him of the Irish tax implications of the proposed transfer of his house and the sale of his farm and flower shop business.

(10 marks)

(b) Your manager, Marie, has sent you the following email:

Adele,

I have left Domhan Nua Technologies Ltd's (DNT) file on your desk. I had a meeting with the Finance Director of the company this morning. He advised me that DNT carried out some research & development (R&D) work in 2014. I am not up to date on the mechanics of tax relief for R&D so will you please have a look at the file and let me know how much R&D relief can be claimed and also when the claim for R&D credit relief needs to be made. In addition, the Board of Directors want to know how they can reward Nigel McLaughlin, in a tax efficient manner, for his great work for the company. Nigel's role is solely within the product development part of the business and 90% of his time and hence 90% of his salary qualifies as R&D expenditure.

DNT recently purchased a site and the company intends to build a new factory and research facilities on the site with some meeting rooms and also some offices for the finance team. I am aware that some R&D relief is available for expenditure on buildings. Before DNT finalise the plans with the architect, can you please outline any specific requirements for R&D relief to apply?

Regards

Marie

You review the file on your desk and note the following:

- DNT has a 31 December year end.
- DNT incurred qualifying R&D expenditure in 2003 of €350,000.
- No further R&D expenditure was incurred until 2014. DNT incurred R&D expenditure of €800,000 in 2014.
- DNT's corporation tax liability has been finalised for the year ended 31 December 2014. €30,000 is due in respect of this period. This liability is much lower than the company's previous year's corporation tax liability of €60,000 due to the heavy expenditure on R&D in 2014.

REQUIREMENT:

Draft a memo to your manager answering the various queries contained in her email regarding the research and development activities of Domhan Nua Technologies Ltd.

(10 marks)

[Total: 20 Marks]

5. You work for ABF Tax Advisors Ltd. Your manager, Nicole, calls you into her office to discuss a long standing client, Pascal Nugent. Pascal had a meeting with Nicole this morning and he has a number of queries which need to be addressed.

Pascal (65) is the 100% shareholder (i.e. he owns 2 €1 ordinary shares) and director of Win Casino Ltd (WCL), a trading company which operates a number of casinos in Dublin City Centre. Pascal has been a full time working director of the company since it was incorporated in January 2003.

A Revenue audit is currently underway in WCL in respect of all tax heads for the year ended 30 June 2013. This is WCL's second audit in the past two years. A qualifying disclosure was made in respect of the previous Revenue audit and substantial tax was paid as a result of an error in the way the company was charging VAT. Pascal had informed ABF Tax Advisors Ltd that he was going to handle this current Revenue audit on his own and that he was not making a voluntary disclosure as he was sure that the tax affairs of the company were in order.

Unfortunately, Revenue have identified the following issues in respect of the tax affairs of WCL for the year ended 30 June 2013:

1. WCL provides Pascal with use of a company car. For the purposes of corporation tax, this car has been treated as a pool car with capital allowances claimed of €3,000. Revenue disagree that this is a pool car as the records show that Pascal is the only person who drives this car and that he drives it home every night from work.

2. A full tax deduction was taken for the pension expense in the accounts. However, it now transpires that a €70,000 pension accrual existed on 30 June 2013.

Also, the Revenue auditor told Pascal that Revenue have reason to believe that he is receiving cash and therefore the sales turnover has been understated. Pascal is adamant that this is not the case but he is now worried that Revenue will visit the casinos unannounced.

The stress associated with this Revenue audit has made Pascal seriously consider retirement. He has been offered €675,000 for his company from an unrelated party and is considering taking this offer subject to knowing the tax consequences associated with the sale.

The values of the assets in WCL at 30 June 2014 were as follows:

	€
Land and Buildings	680,000
Quoted Shares (held as investments)	25,000
Inventories	60,000
Trade receivables	1,000
Cash at bank	80,000

The total liabilities of the company were €176,000.

REQUIREMENT:

Nicole has asked that you prepare a briefing memo for her meeting with Pascal tomorrow evening. Your memo should include the following.

(a) Details of the consequences of a qualifying disclosure not having been made by Win Casinos Ltd (WCL) and the exposure to taxes and penalties, if any, in respect of the matters outlined. Clarification should be provided in respect of Revenue's ability to call to the casinos unannounced.

(12 marks)

(b) Advice for Pascal in respect of the capital gains tax implications associated with the disposal of his shares.

(8 marks)

[Total: 20 marks]

END OF PAPER

SUGGESTED SOLUTIONS

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND

ADVANCED TAXATION

PROFESSIONAL 2 EXAMINATION - AUGUST 2015

SOLUTION 1

STRICTLY PRIVATE AND CONFIDENTIAL

Tax Report for the Directors of the Devlin Holdings Ltd

The following report contains tax advice in respect of:

Section A The capital gains tax, stamp duty and VAT implications for DFF Galway Ltd and DFF Limerick Ltd of the transfer of the site.

Section B The tax implications arising on the transfer of the business from DFF Carlow Ltd to DFF Dublin Ltd.

Section C The tax implications for DFF Dublin Ltd on the sale of its subsidiary DFF Catering Ltd.

Presentation (2)

Section A The capital gains tax (CGT), stamp duty and VAT implications for DFF Galway Ltd and DFF Limerick Ltd of the transfer of the site.

CGT

Group relief under s617 TCA 1997 should apply on the transfer of the site from DFF Galway Ltd to DFF Limerick Ltd.

The transfer will be deemed to be at no gain/no loss and DFF Limerick will have a base cost of €1,400,000. That is, the original cost to DFF Galway Ltd plus the enhancement expenditure incurred in respect of the demolition of the derelict building.

The clawback period for the above intra-group CGT relief for transfers of capital assets is 10 years. A clawback will occur where there is a break in the group relationship between the company holding the asset (DFF Limerick Ltd) and the transferor company (DFF Galway Ltd). However, a clawback will not occur if a company leaves the group by virtue of being wound up or dissolved for bona fide commercial reasons.

(4 Marks)

Stamp duty

No stamp duty liability should arise for DFF Limerick Ltd as s79 SDCA 1999 – Associated Companies Relief should apply.

This section provides for an exemption from stamp duty where transfers take place between companies that are 90% associated.

Both companies will have to remain associated for at least 2 years to avoid clawback of the stamp duty relief.

(3 Marks)

VAT

No VAT was charged on the original acquisition of the site by DFF Galway Ltd. This was as a result of the fact that the site was not developed. It was a green field site.

DFF Galway Ltd and DFF Limerick Ltd are both in a VAT group. 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.

The normal VAT on property provisions will apply as if DFF Galway Ltd and DFF Limerick Ltd are not within a VAT group.

During its ownership, DFF Galway Ltd has developed the site. The company spent €400,000 demolishing the building on the site. Therefore, VAT must be charged on the sale of the site from DFF Galway Ltd. DFF Limerick Ltd intends to use the building for the purpose of its 100% vatable business therefore, it should be entitled to recover 100% of the VAT charged.

(5 Marks)

CG50
As the value of the land transferring is in excess of €500,000 CG50 clearance will be required. (2 Marks)

(14 Marks)

Section B The tax implications arising on the transfer of the business from DFF Carlow Ltd to DFF Dublin Ltd.

CGT for DFF Carlow Ltd
No CGT arises on the transfer of trade receivables or inventory. The plant and machinery and the motor vehicles are being transferred for less than cost therefore there will be no CGT implications.

DFF Carlow Ltd is disposing if chargeable assets of land & buildings and goodwill.

Due to the fact that the land & buildings and the goodwill are being transferred to another group company s617 TCA 1997 provides that group relief should apply.

DFF Carlow Ltd will therefore be deemed to have transferred the chargeable assets at no gain/no loss.

DFF Dublin Ltd will be treated as having purchased the land & buildings and the goodwill at its original costs. That is, the goodwill will have no base cost and the land & buildings will have a base cost of €250,000.

A 10 year clawback period exists. (4 Marks)

Stamp duty
S79 SDCA 1999 associated companies relief should apply to the transfer of stampable assets.

Both companies are associated 100% as they are both wholly owned subsidiaries of DFF Holdings Ltd.

The clawback conditions associated with associated companies relief need to be considered. In order to avoid clawback of any stamp duty relief, DFF Carlow Ltd and DFF Dublin Ltd should remain associated for at least 2 years after the disposal.

Plant & machinery and motor vehicles should transfer by delivery. (4 Marks)

Corporation tax
The position for DFF Carlow Ltd in terms of the assets which it claimed capital allowances on needs to be considered. As DFF Carlow Ltd is transferring its business, it will be deemed to have ceased its trade. The cessation of a trade can have balancing allowance/charge implications. In addition, the ability to transfer the trading losses forward in DFF Carlow Ltd needs to be considered.

S400 TCA 1997 provides relief where a trade carried on by one company is transferred to another company as a going concern. S400 TCA 1997 provides for the transfer of capital allowances and losses from one company to another where a trading company ceases to carry on a trade and following the cessation, another company carries on that same trade. Such a transfer is allowed only where there is substantial common identity of not less than 75% in the ownership of the trade both before and after the change. Therefore, as both companies are held 100% by DFF Holdings Ltd, then the ownership requirement is met. DFF Dublin Ltd will be treated as stepping into the shoes of DFF Carlow Ltd for the purpose of capital allowances and losses. DFF Carlow Ltd will therefore be treated as disposing of assets at their tax written down value.

The right of DFF Dublin Ltd to utilise the losses transferred from DFF Carlow Ltd will be subject to the general loss buying provisions contained in s401 TCA 1997. Where DFF Dublin Ltd does not change the nature of the trade acquired, no restriction should apply.

(5 Marks)

VAT
There are no VAT consequences in respect of the transfer of the trade.

Under S20(2)(c) VATA 2010 'Transfer of Business Relief' VAT is not chargeable on a transfer if the following conditions are satisfied:

1. The purchaser is a VAT registered person and
2. Is entitled to 100% VAT recovery and
3. The transfer must constitute an undertaking or part of an undertaking capable of being operated on an independent basis.

The above conditions appear to be satisfied and so DFF Carlow Ltd will not be entitled to charge VAT on the transfer of the business to DFF Dublin Ltd.

(3 Marks)
(16 Marks)

Section C The tax implications for DFF Dublin Ltd on the sale of its subsidiary DFF Catering Ltd.
The availability of the Participation Exemption (PE) needs to be considered.

Section 626B TCA 97 contains an exemption from CGT on the sale by a parent of shares in a subsidiary. It applies when capital gains are made by the "investor company" (DFF Dublin Ltd) on the disposal of a substantial shareholding in a subsidiary "investee company" (DFF Catering Ltd). Where a disposal qualifies for this exemption any gain made is not a chargeable gain and any losses will be ignored for tax purposes.

(2 Marks)

It should be noted that if the conditions are met the exemption applies, so it is not a relief that needs to be claimed by the investor company.

At the time of disposal the investee company must be tax resident in either a "relevant territory" (i.e., the EU including Ireland) or in a country that has a tax treaty with Ireland. This condition is fulfilled as DFF Dublin Ltd is an Irish trading company.

The investee company must be wholly or mainly trading, or the businesses of the "group" which consists of the investor company, the investee company, and any other "5 per cent" investee companies, must (when taken together) consist wholly or mainly of carrying on a trade or trades. This condition is satisfied as DFF Catering Ltd is a trading company.

(2 Marks)

A company will only qualify as a "parent" at a certain point in time if that time comes within an "uninterrupted period of not less than 12 months" throughout which it has held the 5% shareholding in the investee, whether directly or indirectly. This condition is also satisfied as DFF Dublin Ltd has held 100% of the issued share capital of DFF Catering Ltd since 2011.

(2 Marks)

However, it should be noted that PE does not apply to shares which derive the greater part of their value from land in the State. Per the extract of the Statement of Financial Position for DFF Catering Ltd, it is evident that the company holds property which is located in Ireland. However, as the market value of this property does not make up the greater part of the value of the company (i.e. €900,000) DFF Dublin Ltd should be able to claim the PE and hence not suffer any CGT on the disposal of DFF Catering Ltd.

(2 Marks)

(8 Marks)

SOLUTION 2

Tax Solutions Ltd
Certified Public Accountants
New Business Park
City Road
Ireland

Majella Gibbons
The Village
County Big

XX August 2015

Dear Majella

Following our recent meeting, please find attached a report addressing the following issues raised by you:

- The tax implications for you and for Natural Make-up Ltd of the proposed sale of the Dublin residential properties.
- The tax implications for you in respect of the loan from Natural Make-up Ltd.
- The tax implications for Yvonne of the gift and Dwelling House Relief.
- The tax implications of the transfer of your Cork apartment to a fixed trust in favour of Jacqueline.

The proposed sale of the Dublin residential properties

Market value will need to be imposed as the transfer is between connected persons. The market value of the properties being transferred is €400,000 and this is the amount that Natural Make-up Ltd will pay for the properties.

(1 Mark)

Tax implications for Majella
CGT – Majella will not incur any CGT as she is disposing of the properties at a loss. She acquired them for €750,000 and is selling them for €400,000. As a loss of €350,000 arises as a result of a disposal between connected persons, the loss will be restricted and can only be used against future gains on the disposal of assets to Natural Make-up Ltd.

(1 Mark)

Income tax – As Majella is disposing of the Section 23 properties within 10 years of acquisition she will be subject to a claw back of any Section 23 relief already given. The clawback will take the form of additional rental income subject to tax at her marginal income tax rates in the year of the transfer.

(1 Mark)

VAT – Majella will not need to charge VAT on the transfer of the properties as they are old properties and hence exempt and no VAT was recovered by her at acquisition.

(1 Mark)

Tax implications for Natural Make-up Ltd
Natural Make-up Ltd will be deemed to acquire the properties for €400,000.

Corporation tax – Natural Make-up Ltd should be able to claim s23 relief against its rental income. The company will also now have a rental income stream from the investment properties. Net rental profits will be taxable at 25%. Where rental profits arise the close company surcharge of 20% on estate and investment income needs to be considered.

(2 Marks)

Stamp duty – The company will pay 1% stamp duty on the acquisition of the residential properties.

(1 Mark)

(7 Marks)

Tax implications re the loan from Natural Make-up Ltd
A benefit in kind under Schedule E should arise during the period the loan is outstanding if the interest rate on the loan (i.e. 3.5%) is less than the "preferential loan" rates of 4% for a qualifying home loan and 13.5% for any other loan.

(1 Mark)

As Natural Make-up Ltd is a close company, the loan to Majella will be regarded as an annual payment under deduction of income tax. The company will need to account for 20% income tax on the balance of the loan. The company will be entitled to a refund of this tax when the loan is repaid by Majella.

(1 Mark)

(2 Marks)

Tax implications for Yvonne of the cash gift and Dwelling House Relief
Gift of cash has no CGT implications for Majella.

No stamp duty on cash transfers.

Yvonne would be taking a gift from her blood aunt and hence a group B threshold should be available. The potential CAT liability on a gift of €400,000 cash is:

Value of cash gifted	€400,000
Less small gift exemption	(€3,000)
	€397,000
Less Group B threshold	€30,150
	€366,850
CAT at 33%	€121,061

(3 Marks)

Majella should consider purchasing a house for Yvonne and allowing her to live there for 3 years. By structuring the gift in this way, the transfer could be exempt from CAT.

In order for the transfer to qualify for dwelling house relief, the following conditions would need to be satisfied:

- The recipient (i.e. Yvonne) must have occupied the dwelling- house continuously as her only/main residence for a period of 3 years immediately prior to the date of the gift.
- Yvonne must not, at the date of the gift, be beneficially entitled to any other dwelling- house or to any interest in any other dwelling- house.
- Any period during which a donee (i.e. Yvonne) occupies a house that was during that period the disponer's (i.e. Majella's) only or main residence will be disregarded as a period of occupation in that house unless the disponer is compelled, by reason of old age or infirmity, to depend on the services of the donee for that period – Majella does not intend to live with Yvonne.
- The house must be owned by the disponer (i.e. Majella) during the 3 year period prior to the gift.

Yvonne would be required to continue to occupy the dwelling- house as her only/main residence for a period of 6 years commencing on the date of the gift.

Majella would have to incur stamp duty of 1% on the purchase of the house. Yvonne would then have to pay stamp duty when the house is transferred to her.

Majella would be subject to CGT on the uplift in value from the date of acquisition to the date that the property is transferred to Yvonne.

(3 Marks)

(6 Marks)

Tax implications of the transfer of Cork apartment to a fixed trust in favour of Jacqueline
CGT for Majella - As this is a gift between connected parties, market value will be imposed. Based on the fact that Majella has lived in the apartment since it was acquired, it is assumed that this is her principle private residence and hence any gain on disposal will be exempt.

Stamp duty for the trust – stamp duty will be payable by the trustees on the transfer of the property at a rate of 1%. A stamp duty liability of €2,750 will arise.

CAT for Jacqueline – CAT does not arise on the creation of a fixed trust because Jacqueline will not hold an interest in passion in the apartment until she is 18. A charge to CAT may arise when Jacqueline turns 18 and the CAT calculation will depend on the market value at the property at this time.

(5 Marks)

SOLUTION 3

MEMO
TO: **Manager**
FROM: **Emma Hand**
RE: **Brian McColgan – sale of business**

CGT implications for Brian McColgan of a share sale

	€
Proceeds	4,000,000
Less cost	(200,000)
	3,800,000
Less personal exemption	(1,270)
Gain	3,798,730
CGT at 33%	1,253,581
Net proceeds after CGT	**2,746,419**

CGT implications for BRMC Engineering Ltd (BRMC) of an asset sale

The net proceeds from an asset sale will be:

	€
Proceeds from share sale	4,000,000
Plus liabilities	240,000
	4,240,000

Split of proceeds:

	€	**Base costs**
Property	2,000,000	1,000,000
Plant & machinery	100,000	140,000
Investment property	480,000	400,000
Inventory	200,000	Not a chargeable asset
Trade receivables	450,000	Not a chargeable asset
	3,230,000	
Goodwill - balancing figure	1,010,000	Nil
	4,240,000	

CGT computations where asset sale:

Goodwill	€
Proceeds	1,010,000
Less cost	Nil
	1,010,000

Property	€
Proceeds	2,000,000
Less cost	(1,000,000)
	1,000,000

Investment property*	
Proceeds	480,000
Less cost	(400,000)
	80,000
Total gain	2,090,000
CGT at 33%	689,700

* Subject to Irish CGT even though it is located in UK. UK tax advice should be sought.

Plant & machinery
These are being sold at less than original cost. However, no loss will arise as the capital allowances previously claimed will restrict this loss.

Inventory & trade receivables
No CGT arises as not chargeable assets.

Corporation tax implications for BRMC Engineering Ltd (BRMC) of an asset sale

Plant & machinery	€	
Proceeds	100,000	
Less TWDV	(87,500)	€140,000 - (€140,000x12.5%x3)
Balancing charge	12,500	
Corporation tax at 12.5%	1,563	

(15 Marks)

Cash extraction from company post asset sale
A number of cash extraction methods are available to Brian. BMC could pay him a salary to the value of the funds required or the company could pay him a dividend. Both these methods of extraction would be subject to income tax, PRSI and USC (effective top rate of 52%). Pension contributions are not considered on the basis that Brian wants the money into his own hands immediately. As Brain is exiting the business a liquidation of the company followed by a capital distribution would mean that the CGT rate of 33% would be suffered on the cash extraction.

CGT implications for Brian on liquidation of BRMC followed by a capital distribution

The amount which will be available for distribution on liquidation of BRMC is:

	€
Proceeds received for sale of assets	4,240,000
Less CGT payable by company	(689,700)
Less CT payable	(1,563)
Less liabilities	(240,000)
	3,308,738
Less base cost	(200,000)
	3,108,738
Chargeable to CGT at 33%	1,025,884
Net proceeds in Brian's hands	2,082,854

Advice regarding the best way to structure the sale
Brian would be better structuring the sale of his business as a share sale. Please see below for a directcomparison of the net proceeds receivable by Brian under each type of sale.

	€
Net proceeds on share sale	2,746,419
Net proceeds on asset sale	2,082,854
Additional net proceeds available on share sale	663,565

(5 Marks)

(20 Marks)

SOLUTION 4

(a)

CPA Ltd
Address 1
Address 2
Ireland

Dear John
The position in respect of your Irish tax exposure on the transfer/sale of your assets is set out below.

As you are non-Irish domiciled, a CAT liability will arise for you in relation to a gift or inheritance where:

- The disponer is resident or ordinarily resident in Ireland at the date of the gift/inheritance; or
- The donee is resident or ordinarily resident in Ireland at the date of the gift/inheritance; or
- The subject of the gift is an Irish situate asset.

(2 Marks)

As a non-Irish domiciled individual, you will not be treated as resident or ordinarily resident for the purposes of CAT unless you have been resident in Ireland for each of the five consecutive years preceding the year in which the gift or inheritance is taken.

(1 Mark)

As you have been resident from 2007 to 2014, the earliest this exception could apply to you is from 1 January 2016 (assuming you become non-resident in 2015).

Therefore, you will be within the scope of Irish CAT in 2014 and 2015. From 1 January 2016, you will only be liable to Irish CAT on gifts or inheritances taken from an Irish resident disponer or gifts or inheritances of Irish situated property.

You need to consider the clawback provisions for agricultural relief before you dispose of the farmland. A clawback of agricultural relief will arise if the agricultural property is disposed of or compulsorily acquired within six years of the date of the benefit and is not replaced within one year of the disposal or within six years of the compulsory acquisition by other agricultural property.

As you availed of agricultural relief within the last six years it is likely that a clawback will occur if you dispose of the land in 2014.

(2 Marks)

You also need to be aware of the business relief clawback provisions in respect of the disposal of the flower shop trade. The relief will be clawed back if within six years of the date of the gift or inheritance:

- the assets cease to qualify as relevant business property unless this is due to bankruptcy or a bona fide wind up of the company due to insolvency; or
- if the business (or any business that replaced it) is sold, redeemed or compulsorily acquired and not replaced within one year.

As you inherited the flower shop trade in excess of 6 years ago, no clawback of business relief should apply.

(1 Mark)

You also need to consider your capital gains tax (CGT) position in respect of the disposals. The disposal of property located in Ireland will always be subject to Irish CGT. In addition to this, you will remain subject to Irish CGT on the disposal of non-Irish assets while you are ordinarily resident in Ireland, subject to the remittance basis. It will therefore be 2018 before your exposure to Irish CGT on the sale of non-Irish assets ceases.

Retirement relief will not be available on the disposals as the assets have not been held for 10 years. Therefore, CGT could be a major concern for you in respect of the farmland. You can offset the €50,000 loss that you will incur on the disposal of the flower shop business provided it is disposed of in the same tax year or a previous tax year to the sale of the farmland.

(1 Mark)

You should be entitled to PPR relief in respect of the transfer of your property in Rathmullan. It is noted that you do not intend to dispose of this property until 2016. Any periods of non-occupation of the house before its sale could potentially decrease the PPR relief. However, the final 12 months of occupation are deemed occupation.

In respect of the proposed transfer of your house in Rathmullan to your daughter, it should be noted that regardless of you and your daughter's domicile and residence status, as this property is located in Ireland, it will be within the scope of Irish CAT.

(2 Marks)

Your daughter will be required to pay Irish stamp duty at a rate of 1% when she is gifted the house at Rathmullan.

(1 Mark)

(10 Marks)

(b)

MEMO
TO: **Manager**
FROM: **Adele**
RE: **New World Technologies (DNT) – Research & Development (R&D)**

Please find below answers to your queries.

R&D calculations
Qualifying amount in 2014 is €750,000. That is, 2014 spend of €800,000 less threshold amount of €50,000 (€350,000-€300,000).

The amount of credit available is €750,000 x 25% = €187,500 (1 Mark)

Offset against CT for YE 31 December 2014 = €30,000
Offset against CT for YE 31 December 2013 = €60,000 (1 Mark)

Balance forward is €97,500. 33% of this amount (i.e. €32,175) can be claimed as first instalment and will be payable no earlier than 21 September 2015.
(1 Mark)

The balance remaining of €65,325 (€97,500-€32,175) can be carried forward and claimed against the CT for the YE 31 December 2015. 50% of any balance remaining after this claim can be paid as a second instalment no earlier than 21 September 2016. Any balance remaining can then be claimed against the CT for YE 31 December 2016. Where a balance remains after offset against the CT for 2016, it will be paid as a third instalment no earlier than 21 September 2017.

Claims must be made within 12 months of the end of the accounting period in which the expenditure is incurred.
(2 Marks)

R&D – expenditure on buildings
A tax credit of 25% is available for expenditure incurred on an R&D building. A number of points need to be noted before the plans for the new building are finalised.

- NWT must be entitled to claim industrial buildings capital allowances on the building - this should be fine based on the company's intentions.
- The cost of the site is excluded.
- Any expenditure covered by grants will not be allowed.
- Claw back of the relief will occur if the building is sold or ceases to be used within 10 years for R&D activities
- There is no base year or incremental expenditure concept so all expenditure on the building can qualify for R&D relief.
- The credit is available for new expenditure on the construction, including refurbishment, of a building or structure where the R&D activities carried on by a company in that building or structure over a period of four years represents at least 35% of all activities carried on in the building or structure.
- If only part of the building is used for R&D activities then the expenditure qualifying for the relief must be apportioned.

(3 Marks)

R&D – key employees
Nigel could qualify as a 'key employee' for the purposes of R&D and therefore NWT could transfer a portion of their R&D credits to him.

A "key employee" of NWT is an employee who:
- Was never a director of NWT, or connected to any directors.
- Holds no more than 5% of NWT shares and is not connected with any other individual who hold more than 5% or more of NWT.
- In the year of claim spent 50% of their time on R&D activities – Nigel currently spends 90% of his time engaged in R&D activities.

It appears that all of the above conditions are met by Nigel. Therefore, Nigel should be able to meet the definition of a 'key employee'. NWT can therefore surrender some of their R&D credit to him. The amount of the credit that can be surrendered is limited to the amount of corporation tax due by NWT prior to the making of the claim. In addition, the effective rate of income tax payable by Nigel cannot be reduced to below 23% by the claim. Nigel will have to make a claim to Revenue in order to receive his refund.

(2 Marks)

(10 Marks)

SOLUTION 5

MEMO
TO: Nicole
FROM: CPA
RE: Win Casinos Ltd (WCL) Revenue Audit and retirement

As WCL has not made a qualifying disclosure, the only reduction in penalties will be if Pascal co-operates fully during the course of the Revenue audit.

One of the benefits of making a qualifying disclosure is that the risk of publication could be avoided. Therefore, WCL could now be subject to publication by Revenue. However, publication on the tax defaulters list does not arise where the aggregate of the tax settlement including underpaid tax, interest and penalties do not exceed €30,000.

(1 Mark)

The level of penalties imposed by Revenue on WCL will be dependent upon
- the category of default and
- whether or not there has been/will be co-operation.

(1 Mark)

If a qualifying disclosure had been made, the level of penalty percentage of the underpaid tax would be 30% to the extent that there was careless behaviour with significant consequences and he co-operated on the Revenue audit. As Pascal has not made a qualifying disclosure, the minimum penalty that the company can obtain if it co-operates with the Revenue Officer will be 40% to the extent that there was careless behaviour with significant consequences.

In respect of the situation where it is deemed that there was a deliberate default by WCL, if a qualifying disclosure had been made, the level of penalty percentage of the underpaid tax would be 75% where he co-operates on the Revenue audit. As the company has not made a qualifying disclosure, the least penalty that WCL can obtain if it co-operates with the Revenue Officer will be 100%. Therefore, for this category of default, there is a 25% benefit in making a qualifying disclosure.

(3 Marks)

In respect of the issues that Revenue have identified, WCL's position is as follows:

1. It appears that Revenue view that this is a company car upon which a benefit in Kind should be charged on Pascal. This BIK should be collected via the payroll and Pascal should pay PAYE, PRSI and USC on the benefit. Regardless of the fact that the car is a BIK for Pascal, WCL is entitled to claim capital allowances on the car. The level of CO_2 emissions for the car may have an impact on the level of capital allowances available. Revenue may argue that this represents deliberate default and therefore the tax geared penalty will be 100%.

(3 Marks)

2. WCL would not have been entitled to take a corporate tax deduction for the amount of the pension accrual. An amount of €70,000 should have been added back in the adjusted profits computation. This would result in additional corporation tax due of €8,750. Revenue may argue that the penalty represents a deliberate default as it is the underpayment of corporation tax. However, where this is the first year that there was a pension accrual at the year end an argument could be made such that this is careless behaviour in order to mitigate penalties imposed by Revenue to 40%.

(3 Marks)

Under Section 905 of the Taxes Consolidation Act 1997 Revenue are entitled to enter any business premises at a reasonable time without warrant or notice to inspect/remove documents or records. They are also entitled to require reasonable assistance, including provision of information and explanations or furnishing documents.

(1 Mark)

(12 Marks)

Retirement relief provides for a complete exemption or a reduction in CGT payable (due to marginal relief) on the disposal of certain qualifying assets.

A number of conditions must be satisfied in order for retirement relief to apply,

1. The claimant (Pascal) must be an individual

2. He must be at least 55 years of age at the date of disposal. Pascal is 65 so this condition is satisfied.

3. The relief is available in respect of "qualifying assets". Shares in a family company fall within the definition of qualifying assets. The company must be trading and the shares must have been owned by the individual for at least 10 years ending with the disposal and in which the individual has been a working director for at least ten years and a full-time working director for at least five of those years. These conditions are all satisfied.

For individuals aged between 55 and 65 years who dispose of 'qualifying assets' on or after 1 January 2014, the ceiling for the relief is €750,000. However, some marginal relief may be available.

The agreed sale price of the shares in the company is €675,000. Pascal paid €2 for the shares in January 2003.

(5 Marks)

The quoted shares are chargeable assets since they are assets upon whose disposal a chargeable gain can arise, but they are not chargeable business assets, as they have not been used for the purposes of the trade.

The value of the chargeable business assets ("CBA") is €680,000 (i.e. the land & buildings)

However, the value of the total chargeable assets amounts to €705,000 (i.e. CBA plus quoted shares of €25,000).

The amount of the sale proceeds to be treated as referring to the sale of chargeable business assets is: €675,000 x 680,000/705,000 = €651,064.

(2 Marks)

As the portion of sales proceeds does not exceed €750,000 retirement relief will be available.

CGT computation	€
Proceeds	675,000
Cost	(2)
Chargeable gain	674,998
Retirement relief	(651,064)
Net gain	23,934
CGT at 33%	7,898

No annual exemption where retirement relief is claimed. (1 Mark)

(8 Marks)