Answers

1 (a) The proposal to pay the fee in money's worth (the travel voucher) rather than money does not, of itself, cause a problem, but it is essential that the sales invoice and the receipt of the voucher are accounted for correctly and there is no evasion of value added tax (VAT) or income tax.

In this case, the voucher amounts to €500 (the net amount of the fee). Mary owes an additional €115 VAT which should be collected and remitted to the Revenue with the next return. If Mary is not in a position to pay the VAT, it may be necessary to reduce the fee to a gross amount of €500. In that case, VAT of €93 would be payable by the practice to the Revenue.

Care should be taken that the net amount of the fee (either €500 or €407 as appropriate) is included in the practice income and declared for income/corporation tax purposes.

(b)

ABC & Co
Chartered Certified Accountants
Any Street
Any Town

5 August 2012

Mary Smith
Any Street
Any Town

Re: Financial and taxation planning

Dear Mary,

I refer to our recent meeting and am writing to give you my advice on the following issues:

(i) Recommended actions required to minimise the capital gains tax (CGT) arising on the recent sale of your USA property.
(ii) The capital tax implications of the three options by which your uncle Joe proposes to assist you, and our advice on which alternative should be chosen.
(iii) The effect of implementing the recommendations arising at (i) and (ii) above on your level of borrowings.
(iv) The various taxes on income arising regarding your proposed sole trade in the years 2013 and 2014.

(i) Recommended actions required to minimise the capital gains tax (CGT) arising on the sale of your USA property.

Please refer to Appendix 1, Schedule 1.

You have made a capital gain of €250,000 on the disposal of your USA property in April 2012 and, in the absence of loss relief, CGT of €75,000 would be payable.

You do not currently have any losses brought forward to offset against the above gain. However, there are latent losses on your investments in Smith Property and Financial Services Ltd (SPFS) and your Dublin apartment.

Recommendations

1. Negligible value claim in respect of your SPFS loss

Please refer to Appendix 1, Schedule 2.

Under the normal rules, the SPFS loss of approximately €60,000 would crystallise only when the liquidation of the company is complete, which will not be until 2013. As losses cannot be carried back for CGT purposes, this would be of no benefit to you in 2012.

However, a negligible value claim could be made in respect of this loss. Where an individual owns an asset which has dropped significantly in value such that the value of the asset has become small or negligible, they can make a claim to the Inspector of Taxes. Appropriate documentation such as the most recent set of accounts of the company should accompany the claim. If the claim is accepted, they are treated as having disposed of the asset at market value and immediately re-acquired it at the same date. The loss is then available in the year in which the claim is made. It is, therefore, recommended that such a claim is made in 2012 in respect of your SPFS shares as this will have the effect of bringing forward the loss to 2012.

2. Sell your Dublin apartment in 2012

Please refer to Appendix 1, Schedule 3.

The latent loss in this residential property is also of no benefit until it is crystallised. It is, therefore, recommended that this property should be sold before 31 December 2012. If the suggested price of €210,000 is achieved, there will be an allowable loss of €195,000 arising in 2012.

If the steps outlined above are taken, there will be a nil CGT liability in respect of the sale of the USA property. The position is summarised in Appendix 1, Schedule 4.

(ii) The taxation implications of the three alternative ways by which your uncle Joe proposes to assist you, and our advice on which one should be chosen.

The detailed calculations in relation to options (1) to (3) are included in Appendix 2.

Option (1): Joe gifts the building to you for you to sell and use the proceeds to repay your borrowings.

Capital gains tax
A gift of property is chargeable to CGT as if it were a sale at full market value. The CGT, payable on the disposal at 30%, will amount to €61,023.

No additional CGT liability is expected to arise on the sale of the building by you to a third party, as the base cost and the proceeds are expected to be identical.

Stamp duty
The stamp duty rate applicable to all non-residential property is 2%. A transfer between uncle and niece qualifies for the 50% consanguinity relief reduction and the stamp duty applicable is therefore €2,500. This amount is deductible in the calculation of the capital acquisitions tax (CAT) payable on the gift.

Capital acquisitions tax
CAT (gift tax) will be levied at the rate of 30% on the benefit received less the normal (class 2) exempt threshold between uncle and niece of €33,500.

Unfortunately, the higher exempt threshold applicable to favourite niece relief is not available in relation to this transaction as it is a condition of the relief that you (the beneficiary) work substantially full time in the business for the five years ending on the date of the gift and your employment with your uncle ended in 1989.

A credit cannot be claimed against the CAT for any CGT payable on the same event, unless the relevant asset is held for two years, and in this case an immediate sale is required. The CAT liability amounts to €45,743.

Total liability
The total taxes payable under option (1) will amount to €109,266.

Option (2): Joe sells the property and gifts the after-tax proceeds to you.

The CGT liability under this option will be the same as in option (1). However, the sale of the building to a third party and the gift of the net proceeds to you are clearly two separate events. It is, therefore, not possible to claim a credit for the CGT against the gift tax liability. No stamp duty is payable on the cash gift to you.

The total tax cost of this option is €106,766.

Option (3): Joe leaves the property to you in his will.

In the case of a transfer by way of inheritance, the only tax which arises is CAT. There is no charge to CGT or to stamp duty. The total tax cost of this option, therefore, amounts to €64,950.

Recommended option

Option (2) is recommended even though it involves paying an additional €41,816 in taxation compared with option (3).

The obvious advantage of option (2) is that it allows for the immediate transfer of the property to you, which is essential in view of your bank situation. The disadvantage of option (3) is that you would not receive the property until sometime in the future when your uncle dies and there is also the possibility that he may change his mind in the meantime.

Tutorial note: *There are no VAT adjustments arising on the disposal of the property. No VAT arises on the sale as the property is not new and has not been redeveloped. There is no deductibility adjustment as the property is outside of the 20-year VAT life.*

(iii) The effect of implementing the recommendations arising at (i) and (ii) above on your level of borrowings.

	€
Borrowings prior to repayments	400,000
Less: Proceeds from the sale of apartment	(205,000)
Less: Net proceeds from sale of warehouse (250,000 – 106,766)	(143,234)
Remaining borrowings	51,766

The sale of the Dublin apartment and the warehouse will reduce your borrowings to approximately €51,766. We understand that your income has been substantially reduced; however, the repayment of this amount should be manageable in the medium term, and a suitable proposal can be arranged with your bank. It may be possible to negotiate a two-year delay in the sale of the warehouse (as required under option 1), which would result in an increased loan repayment.

You should note, however, that the above calculation has not taken loan interest into account for the period between now and the date of sale of the properties. Obviously the sooner the properties are disposed of, the less interest will be payable.

(iv) Tax issues arising from your proposed sole trade in the years 2013 and 2014.

1. **Registration**

   It is clear that you will be obliged to register for VAT from the start because you are supplying a service and the registration threshold is a turnover of €37,500 in any 12-month period.

   You will also be obliged to register for income tax as a sole trader.

2. **Taxes payable**

   Unfortunately, your suggestion that you will have no income tax liability for the first two years is not correct. In relation to the points raised:

   – Sole traders are assessed to income tax based on their net profits (adjusted for income tax purposes) and not on their drawings.
   – SPFS is a company and a separate entity from you, so its trading losses are not allowable against income earned from your proposed sole trade.

   The profits arising from your sole trade will be subject to income tax, PRSI and the universal social charge (USC).

   In relation to income tax, there are commencement rules in relation to the early years of a business, which will result in the following profits being assessed to tax.

   Year of commencement (2013)
   Profits from the date of commencement to 31 December (€50,000 x 6/12) €25,000

   Second year (2014)
   Profits for the first year of trading €50,000

   It is expected that, in the absence of any other income, you would be subject to the 20% rate of income tax on income up to €32,800 and 41% on income in excess of this amount and you will be able to deduct the single person's credit of €1,650 from your income tax liability. In addition to this, self-employed PRSI will be payable at 4% on the total income and USC will also be payable at rates of between 2% and 7%.

If you have any queries in relation to the above, please contact me,

Yours faithfully

A.N. Accountant

Appendix 1

Schedule 1: Potential CGT liability on the disposal of the USA property

	€
Sales proceeds	350,000
Cost (no indexation)	(100,000)
Chargeable gain	250,000
Capital gains tax at 30%	75,000

Schedule 2: Calculation of loss arising on the shares in SPFS using the negligible value claim

	€
Sales proceeds	0
Cost (no indexation)	(60,000)
Allowable loss	(60,000)

Schedule 3: Capital loss arising on the disposal of the Dublin apartment

	€
Sales proceeds	210,000
Less: Professional fees	(5,000)
	205,000
Cost (no indexation)	(400,000)
Allowable loss	(195,000)

Schedule 4: Summary CGT computation

	€
Chargeable gain on sale of USA property	250,000
Less:	
Loss on disposal of Dublin apartment	(195,000)
Loss on shares in SPFS	(60,000)
Loss available for carry forward to 2014	(5,000)
Capital gains tax liability	Nil

Appendix 2

Option (1) Gift of property to Mary and subsequent sale of the property by Mary

CGT

	€	€
Sales proceeds (market value)		250,000
Cost	30,000	
Indexation factor 1988/89	1·553	(46,590)
Chargeable gain		203,410
Capital gains tax at 30%		61,023

Stamp duty

(€250,000 x 2%) x 50% (Consanguinity relief) €2,500

CAT (gift tax)

The CAT liability amounts to €45,743 which is the same as under option (2) and is calculated below.

Summary of taxes payable under option (1)

	€
CGT	61,023
CAT	45,743
Stamp duty	2,500
Total taxes payable	109,266

Option (2) Sale of property by Joe and gift of net proceeds to Mary

CGT (as above) €61,023

CAT (gift tax)

	€
Calculation of net proceeds	
Sales proceeds	250,000
Less: CGT payable	(61,023)
Net proceeds	188,977

	€
Tax computation	
Value of gift	188,977
Less: Small gifts exemption	(3,000)
	185,977
Group threshold	(33,500)
	152,477
CAT at 30%	45,743

Summary of taxes payable under option (2)

	€
CGT	61,023
CAT	45,743
Stamp duty	–
Total taxes payable	106,766

Option (3): Mary inherits the property on Joe's death

CAT

	€
Market value	250,000
Group threshold	(33,500)
	216,500
CAT at 30%	64,950
Total tax payable	64,950

2 Mullins Ltd

(a) Value added tax (VAT)

UK VAT-registered customers
The goods supplied (both adult and children's clothing) may be zero rated, provided the following conditions are met:

– the customer's UK VAT registration number must be obtained and retained in the records of Mullins Ltd;
– the customer's VAT number must be quoted on the sales invoice along with the VAT number of Mullins Ltd; and
– evidence of despatch to the UK should be retained by Mullins Ltd.

UK non-registered customers
Irish VAT should be charged at the appropriate rate (i.e. children's clothing at 0% and adult clothing at 23%).

(b) Potential liability to UK corporation tax

(i) Trading 'with' and trading 'in'

Foreign tax will only arise on trading profits if the Irish company is trading **in** the foreign country as distinct from simply trading **with** the foreign country. If an Irish company simply trades with a foreign country, no foreign corporation tax liability arises.

It is only when Mullins Ltd starts to 'trade in' the UK, that we would expect that it would have a liability for UK corporation tax.

Under the Ireland/UK tax treaty, business profits of an enterprise can only be taxed in the UK where that enterprise is either resident in the UK or has a permanent establishment in the UK.

Residence
Mullins Ltd is an Irish registered company, which is effectively managed and controlled in Ireland and thus it is Irish resident, not UK resident.

Permanent establishment
The Ireland/UK tax treaty defines the term permanent establishment as 'a fixed place of business in which the business of the enterprise is wholly or partly carried out.'

The treaty specifically states that a branch or office is a permanent establishment and also states that facilities used for the storage, display or delivery of the goods belonging to the enterprise are not considered to be a permanent establishment.

In addition, an agent or employee based in the foreign country, but not working from a fixed place of business of the enterprise, will be considered a permanent establishment if he/she has and habitually exercises the authority to conclude sales contracts for the enterprise.

Only if Mullins Ltd is considered to have a permanent establishment in the UK on the basis of these criteria will it be subject to UK corporation tax.

(ii) Position of Mullins Ltd in 2014, 2015 and 2016

2014
Mullins Ltd will trade with customers in the UK and will be carrying on all its activities, other than physical delivery of the products, in Ireland. The company will clearly not have a permanent establishment in the UK as there is no fixed base in the UK and although John O'Brien plans to visit the UK for approximately 60 days with the intention and presumably authority to conclude sales contracts, it is clear that he could not be considered an 'agent or employee based in the foreign country'.

In summary, for the year 2014 the company will be 'trading with' the UK and thus it would not have any exposure to UK corporation tax on its profits.

2015
The warehouse would constitute a 'facility used for the storage, display or delivery of the goods' and (as stated above) this would not be considered to be a permanent establishment.

Therefore, whether Mullins Ltd will be deemed to have a UK permanent establishment will depend on the authority allowed to the UK-based salesperson. If that individual can follow up queries and pass over orders but cannot conclude a sales contract, then there would be no UK permanent establishment. However, if they can conclude sales contracts, there would be a UK permanent establishment and the profits earned in the UK would be subject to UK corporation tax.

2016
The opening of an office in the UK will constitute a permanent establishment and UK corporation tax will apply to the profits generated in the UK, from the date that this office opens.

Mullins Ltd would be entitled to a credit for any UK corporation tax against the Irish corporation tax payable on the same income. Credit is allowed up to the level of the lower of the Irish or UK tax payable on the income.

(iii) Mitigation of UK tax exposure

In 2015 Mullins Ltd should NOT give authority to conclude contracts to its UK-based salesperson. This will avoid the setting up of a permanent establishment in 2015 and postpone the company's entry into the UK corporate tax system until 2016.

(iv) Branch or subsidiary

The decision as to whether to set up a foreign branch or subsidiary depends on two main factors:

– the respective tax rates in the two countries; and
– the possibility of trading losses in the start-up phase of the foreign business.

Tax rates
The setting up of a subsidiary can be beneficial if the foreign tax rate is less than the Irish tax rate, as the foreign profits would only suffer the higher Irish corporation tax when the profits are eventually repatriated by way of dividend.

In this case, the UK tax rate on trading profits is higher than the Irish tax rate and, therefore, no additional corporation tax burden would arise under a branch structure if the UK profits were taxed immediately in Ireland. There is therefore no tax advantage in setting up a subsidiary.

Losses
Where a foreign operation makes losses, there would be an argument in favour of setting up a branch structure in the foreign country and utilising the losses to reduce the Irish tax burden on the Irish company.

However, this point is not relevant in Mullins Ltd's case as its UK operation is expected to be profitable from the start.

Recommendation
In this situation (for the reasons set out above), the tax ultimately payable on the profits of the UK operation will be the same regardless of whether a branch or a subsidiary structure is used.

(c) John O'Brien

In the tax year 2016 John O'Brien is likely to be considered resident in both Ireland and the UK.

John will still be resident in Ireland, because he will have been present in Ireland for more than 280 days in aggregate between 2016 and 2015 and the 45 days approximately which he expects to spend in Ireland in 2016 will exceed the 30 day limit for this test.

It is also likely that John will be considered resident in the UK in 2016 under UK domestic legislation, due to the number of days which he will spend there.

The UK/Ireland tax treaty has tie-break rules to deal with this situation and the first tie-break rule states that an individual will be deemed to be a resident of the country in which he has a permanent home available to him.

It is clear from the above that John O'Brien would be deemed resident in Ireland for the year 2016.

Tutorial note: *The UK tax year runs from 6 April to 5 April, but this has no effect on the answer to this question.*

3 Alexis Ltd

(a) Close company status

A close company is one which is under the control of five or fewer participators or of participators who are directors (regardless of number). The shareholdings of participators and their associates are aggregated and treated as one person for the purposes of the above test.

In this case, the combined shareholdings of Tom Dunne and his associates, Margaret and Anne Dunne, amount to 200 shares. When these are combined with the shareholdings of any four of the remaining shareholders (holding 100 shares each), the total shareholding amounts to 600 shares, or 54·5% of the total shares. Alexis Ltd is therefore a close company.

(b) Sale of office building to Tom Dunne

The office building was sold to Tom Dunne at €40,000 less than the market value of the property at the time. The implications of this are as follows:

(1) Alexis Ltd is treated as disposing of the asset at full market value.

	€
Sales proceeds	220,000
Cost	(200,000)
Gain	20,000

Corporation tax on the chargeable gain amounting to €6,000 (€20,000 x 30%) will be payable by Alexis Ltd.

(2) Tom Dunne, as a director of the company, is treated as receiving a benefit in kind of €40,000 (€220,000 – €180,000).

Income tax of €16,400 (€40,000 x 41%) became payable by Alexis Ltd on the 15th of the month following the transaction, i.e. on 15 December 2012.

(3) The under-value of €40,000 will be apportioned over all the company's issued ordinary shares and in the event of a future disposal, the base cost of their shares will be reduced accordingly.

(c) Corporation tax liability for the year ended 31 December 2012

	€
Trading income per accounts	210,000
Less: Capital allowances	(20,000)
Case II income	190,000
Case III interest	10,000
Case V rental income	50,000
Total income	250,000
Chargeable gain (€20,000 x 0·3/0·125)	48,000
	298,000
190,000 x 12·5%	23,750
10,000 x 25%	2,500
50,000 x 25%	12,500
48,000 x 12·5%	6,000
	44,750

(d) Close company surcharge for the year ended 31 December 2012

Surcharge on service company income

	€	€
Case II income	190,000	
Less: Corporation tax at 12·5%	(23,750)	
After-tax trading income	166,250	
Surcharge 50% of €166,250 at 15%		12,469

Surcharge on investment and estate income

	€	
Interest income	10,000	
Rental income	50,000	
	60,000	
Less: Corporation tax at 25%	(15,000)	
	45,000	
Franked investment income	5,000	
	50,000	
Less: Trading company reduction at 7·5%	(3,750)	
	46,250	
Less: Distribution (see note)	(40,000)	
Undistributed amount	6,250	
Surcharge at 20%		1,250
Total surcharge		13,719

Note: The distribution of €40,000 (arising from the disposal of the office building to Tom Dunne) has been applied to reduce the income attracting the higher rate of surcharge (20%).

(e) A total of €172,500 (€166,250 + €6,250) of income is subject to the surcharge at 31 December 2012. Alexis Ltd can avoid this surcharge completely by paying a dividend of €172,500 within 18 months of the year end (i.e. before 30 June 2014).

4 Wright Ltd

(a) Capital goods scheme

A developed property has a value added tax (VAT) life of 20 years and a life of ten years on any redevelopment of the property.

The VAT incurred on the acquisition or development of a property is deductible in accordance with the normal rules relating to deductibility.

When a property is acquired, an immediate estimate of the VAT recovery rate is made. A person who is engaged in a fully taxable economic activity is entitled to deduct 100% of the VAT charged on the acquisition or development of a property to be used in the business. A person who is engaged in partly taxable and partly exempt economic activities is only entitled to deduct the percentage of VAT charged which corresponds to the percentage of taxable use.

At the end of the first 12 months following completion (or acquisition, where the property is acquired following completion), the taxpayer must review the amount of VAT deducted on the acquisition or development of the property. If the proportion of taxable use of a property during that 12-month period differs from the proportion of the VAT deducted on the acquisition or development of that property, then an adjustment is required. If too much has been deducted, the taxpayer must pay back the excess. If too little has been deducted initially, the taxpayer is entitled to claim the deficiency as an input credit.

Similar annual comparisons must be performed using the first year recovery rate as the benchmark rate for the remaining VAT life of the property. However, where there is a very substantial change in the use of the property (i.e. 50 percentage points or more), this is called a 'big swing' and further adjustments are required, including the rebalancing of the benchmark figure.

Every owner is obliged to keep a capital goods record in respect of each property owned. This record includes details of the issues outlined above and must be kept up to date and passed on to the future purchaser in the event of a sale of the property.

(b) Value added tax (VAT) implications

(i) The transfer of the assets of a business is exempt where those assets constitute an undertaking or part of an undertaking capable of being operated on an independent basis. For this relief to apply, the purchaser must also be a VAT-registered entity. The sale of the Cork branch meets both the above criteria and therefore Wright Ltd was correct in not charging VAT on the transaction.

(ii) The sale of the building on 10 July 2012 took place within five years of the completion of the repair and decoration work. However, this repair and decoration work:

(1) did not materially alter the building (as it was still an office after its completion); and
(2) did not cost more than 25% of the sales consideration.

The work done would therefore be considered minor development and so not have the effect of making the building a 'new' building. The sale of the building would be exempt from VAT.

(iii) At the end of the initial interval, i.e. 31 October 2012, Wright Ltd calculated that the use to which the property was put during the initial interval was 80% taxable. As Wright Ltd deducted 100% of the VAT charged, it is now obliged to make an adjustment (because there is a difference between these two figures).

The total reviewed deductible amount is €86,400 (€800,000 x 23% = €108,000 x 80%) and there will, therefore, be a claw-back of the difference of €21,600.

The annual reference deduction amount is now €4,320 (€86,400/20). At the end of the second and subsequent intervals (i.e. 31 December 2012 and each 31 December thereafter), the proportion of deductible use will need to be reviewed.

(iv) Wright Ltd has made a self-supply by applying the two computers previously used for making taxable supplies to an exempt use (insurance broking). The allocation of the computer to personal use is also a self-supply. The company must account for output VAT at 23% on the net cost of the three computers. This amounts to €374 (€2,000 x 23/123).

The VAT should have been included in the VAT return for March–April 2012 and if this was not the case, Wright Ltd may be liable for interest on the late payment (which is approximately 8% per annum).

(v) **Audit fees**
The portion of VAT relating to tax planning in relation to the personal property portfolio of John Wright amounts to €230. This is not allowable as the expense is not a company expense.

The VAT element of the fee for audit and accountancy services and the taxation services to Wright Ltd amounts to €2,070. This should be apportioned in accordance with the respective turnover from auctioneering and insurance broking (or some other reasonable basis). The portion of VAT relating to insurance broking should be disallowed.

Electricity
The VAT element of the electricity bill also needs to be apportioned, on the basis of turnover (or alternatively, square footage may be a more accurate basis). Again, the amount of VAT relating to insurance broking should be disallowed.

5 Basket Ltd

(a) Capital gains tax treatment

A purchase by a company of its own shares will only be treated as a capital gains tax disposal if all of the following conditions are satisfied:

(i) The acquisition must be made by an unquoted trading company.

(ii) The shareholder must have owned the shares for at least five years before the disposal. A period of ownership by a spouse living with the shareholder is aggregated with that of the shareholder for this purpose.

(iii) The acquisition must be made mainly for the purpose of benefiting the company's trade.

(iv) The acquisition must not form part of an arrangement the main purpose, or one of the main purposes, of which is to avoid the treatment of the gain on the shares as a distribution.

(v) The shareholder must be resident and ordinarily resident in the State.

(vi) After the acquisition, the shareholder cannot be connected with the acquiring company or any other company which is a member of the same group as the acquiring company. A 30% shareholding is the trigger point for this purpose.

(vii) The shareholder's interest in the company must be substantially reduced following the acquisition. This means that the shareholder's percentage interest in the company or group after the acquisition must be less than 75% of the corresponding interest before the acquisition.

In relation to test (iii), the Revenue are prepared to accept that the condition is satisfied where there is a dispute between shareholders which is expected to have an adverse effect on the company's trade. There is a recommended procedure for applying for advance clearance or agreement from the Revenue that the capital gains tax treatment will be applied.

(b) Tax implications

(1) **Paul Murphy**
Paul Murphy qualifies for CGT treatment on the share buyback, as the necessary conditions above are satisfied as follows:

– condition (ii), he has held his shares for more than five years

– condition (iii), given the scenario it is clear that the buybacks would be accepted by the Revenue as being for the benefit of the trade.

– condition (v), even though he has recently emigrated, Paul remains resident in Ireland under the 280 day look back rule, because he spent more than 30 days in Ireland in 2012; and it is clear that he is also ordinarily resident in Ireland in 2012.

– conditions (vi) and (vii), the buyback comprises 100% of the shares held.

Retirement relief will not be available as Paul has not held the shares for the required ten-year period.

The CGT payable is calculated as follows:

	€
Proceeds	50,000
Less: Cost (2007)	(15,000)
Chargeable gain	35,000
Less: Annual exemption	(1,270)
	33,730
CGT at 30%	10,119

Assumptions

It is assumed that Mr Murphy had no other disposals of chargeable assets in 2012 and also had no losses brought forward.

The CGT is payable on or before 15 December 2012 as the relevant disposal took place in the period between 1 January and 30 November 2012.

(2) Ronald Keane

Ronald Keane will only have held the shares for four years at the time of the proposed buyback and therefore will not qualify for the CGT treatment.

The income tax treatment applies to the buyback from Ronald, which means that the excess of the proceeds over the nominal value of the shares is treated as a distribution. The company must retain dividend withholding tax (DWT) on the distribution at the rate of 20% and this DWT is available as a credit against Ronald's income tax liability.

The overall tax liability on the distribution is calculated as follows:

	€
Proceeds	10,000
Less: Nominal value of shares	(500)
Excess: Schedule F income	9,500
Income tax, PRSI and USC at 52%	4,940
Less: DWT already deducted by company	(1,900)
Balance of income tax, PRSI and USC payable	3,040

On the assumption that Ronald does not file his income tax return online, the balance of tax due should be paid with his preliminary (income) tax for 2012, which is payable on 31 October 2012.

(3) Basket Ltd

The company will not get a corporation tax deduction for the payments made either in respect of the cost of the shares or the loan repayment.

As stated in (2), Basket Ltd must deduct DWT at 20% the distribution to Ronald and this €1,900 is payable by the company on the 14th day of the month following the distribution (i.e. 14 November 2012).

Stamp duty is payable when a company buys back its own shares. This liability will amount to 1% of the market value of the shares purchased, i.e. 1% x €60,000; this €600 is payable at the time of the buyback.

However, a redemption of shares (as opposed to a buyback) is not subject to stamp duty. Therefore, Basket Ltd would be able to reduce its stamp duty liability to nil if it were to convert the ordinary shares into redeemable preference shares, to enable redemption.

(c) Other issues

Under companies legislation, the company must have sufficient reserves out of which to pay for the shares or, alternatively, the purchase must be made out of a new issue of shares.

In Basket Ltd's case, the company has €150,000 in reserves, which is sufficient for the share buybacks (amounting to €60,000 in total). The repayment of the loan to Paul Murphy is not relevant in this context.

In addition to this, the appropriate board resolutions must be passed regarding the buyback.

This marking scheme is given as a guide to markers in the context of the suggested answer. Scope is given to markers to award marks for alternative approaches to a question, including relevant comment, and where well reasoned conclusions are provided. This is particularly the case for essay based questions where there will often be more than one definitive solution.

				Available	*Maximum*
1	**(a)**		Calculations and comment re collection and remittance of VAT element	1·5	
			Correct accounting for net sales amount for income tax purposes	1·0	
				2·5	2·0
	(b)	**(i)**	Calculation of potential CGT on disposal of USA property	1·5	
			Identification of €60,000 latent loss on SPFS	1·0	
			Calculation of loss on Dublin apartment	1·5	
			Recommendation re negligible value claim	1·0	
			Explanation of requirements of negligible value claim	2·0	
			Recommendation to sell Dublin apartment in 2012	1·0	
			Conclusion that the implementation of the above eliminates the CGT liability	0·5	
				8·5	8·0
		(ii)	Option (1)		
			CGT calculation on gift	2·0	
			No additional CGT liability when Mary sells the property	1·0	
			Stamp duty calculation	1·0	
			Stamp duty deductible for CAT	0·5	
			CAT (gift tax) as in option 2	2·0	
			Credit for CGT on same event (two-year retention period)	1·0	
			Non-applicability of favoured niece relief	1·0	
			Option (2)		
			CGT as in option (1)	0·5	
			No stamp duty payable	1·0	
			No credit for CGT as there are two separate events	1·0	
			CAT (gift tax) calculation	2·0	
			Option (3)		
			No CGT or stamp duty cost	1·0	
			CAT calculation	1·5	
			Recommendation		
			Selection of Option (2) (or other options) with justification	2·0	
				17·5	15·0
		(iii)	Calculation of remaining borrowings	1·0	
			Commentary re interest accruing prior to sale	1·0	
			Timing of repayment	1·0	
				3·0	2·0
		(iv)	Registration for VAT and income tax	1·0	
			Tax applies to profits and not drawings	1·0	
			Losses from SPFS Ltd are not allowable	1·0	
			Application of commencement rules	1·0	
			Applicability of PRSI and USC	1·0	
				5·0	4·0
			Professional marks		
			Format and presentation of the letter	1·0	
			Effectiveness of written communication	1·0	
			Appropriate use of support schedules/appendix	1·0	
			Logical flow of calculations	1·0	4·0
					35

				Available	Maximum
2	(a)	VAT-registered customers			
		Both products zero rated		1·5	
		Conditions (3 x 0·5)		1·5	
		Unregistered customers			
		Charge at the appropriate rate		1·5	
				4·5	4·0
	(b)	(i)	Trading 'in' and trading 'with'	1·5	
			Residence (including application to Mullins Ltd)	1·5	
			Permanent establishment: definition	1·0	
			Examples: employee, office, warehouse	2·0	
				6·0	5·0
		(ii)	2014 No permanent establishment – office	1·0	
			John O'Brien not a UK-based agent	1·0	
			No exposure to UK tax	1·0	
			2015 Warehouse not a permanent establishment	1·0	
			Discussion of authority to be given to agent	2·0	
			2016 Office is a permanent establishment	1·0	
			Explanation of the application of UK tax and credit	1·0	
				8·0	7·0
		(iii)	Recommendation re authority of agent		1·0
		(iv)	Tax rates	2·0	
			Losses	2·0	
			Recommendation	1·0	5·0
	(c)	John O'Brien resident in Ireland: 280 day test		1·0	
		John O'Brien also resident in the UK		1·0	
		Tie-break rule to determine residence and conclusion		1·5	
				3·5	3·0
					25
3	(a)	Definition of close company		1·0	
		Application to Alexis Ltd		1·5	
				2·5	2·0
	(b)	Company treated as disposing at market value		2·0	
		Calculation of corporation tax on chargeable gain		2·5	
		Tom Dunne treated as receiving a BIK and calculation and payment date for tax on BIK		3·5	
		Reduction in base cost of shares for future disposal		1·5	
				9·5	8·0

Note: *Marks were also awarded to candidates who treated the sale at undervalue as a distribution rather than a BIK.*

	(c)	Corporation tax computation			3·0
	(d)	Surcharge on service company income		1·5	
		Surcharge on investment and estate income		4·0	
		Application of distribution against the investment and estate income		1·0	
				6·5	6·0
	(e)	Payment of dividend within 18 months			1·0
					20

				Available	Maximum
4	(a)		Tax life of 20 or 10 years	1·0	
			Initial recovery rate on acquisition	1·5	
			Review and adjustment after one year	1·5	
			Annual comparisons with first year recovery rate for remainder of life	1·0	
			More substantial adjustments if there is a 'big swing'	1·0	
			Capital goods record	1·0	
				7·0	6·0
	(b)	(i)	Exemption for transfer of an undertaking	1·5	
			Requirement for purchaser to be VAT registered	1·0	
		(ii)	No material alteration of the building.	1·0	
			Cost of works less than 25% of consideration	1·0	
			Conclusion: not 'new' so exempt	0·5	
		(iii)	Explanation	1·5	
			Calculation of reviewed deductible amount €86,400	1·0	
			Claw-back of €21,600	0·5	
			Annual reference amount €4,320	0·5	
			Reference to need for subsequent reviews	0·5	
		(iv)	Explanation of both cases of self-supply	1·5	
			Calculation of VAT owing	1·0	
			Explanation of due date and interest exposure	1·0	
		(v)	Audit fees		
			Disallow VAT credit re personal tax planning	1·0	
			Apportionment of VAT element of other fees	1·5	
			Electricity		
			Suggested apportionment using turnover	0·5	
			Suggested apportionment using square footage	0·5	
				16·0	14·0
					20

			Available	Maximum
5	**(a)**	Seven conditions for CGT treatment (7 x 0·5)	3·5	
		Explanation regarding 'for the benefit of the trade'	1·0	
			4·5	4·0
	(b)	Paul Murphy		
		Share ownership period	1·0	
		Benefit of the trade	1·0	
		Residency	1·0	
		Buyback of 100% of holding	0·5	
		Conclusion that he qualifies for CGT treatment	0·5	
		Retirement relief not possible	1·0	
		CGT computation including assumptions	2·0	
		CGT payment date	0·5	
		Ronald Keane		
		Does not qualify for CGT due to share ownership period	1·0	
		Explanation of basis for income tax liability	1·0	
		Calculation of income tax, PRSI and USC liability	1·0	
		Payment date	0·5	
		Basket Ltd		
		Corporation tax deduction not available	1·0	
		DWT and payment date	1·5	
		Stamp duty calculation and payment	1·5	
		Redemption option	1·0	
			16·0	14·0
	(c)	Other issues		
		Company law requires sufficient reserves/new issue	1·5	
		Application of the above to Basket Ltd	1·0	
		Board resolutions	0·5	
			3·0	2·0
				20